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The American
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VOL. XXXI DECEMBER, 1937 NO. 6

THE JAPANESE CONSTITUTION

KENNETH COLEGROVE[1]
Northwestern University

The Japanese constitution of 1889 is not, as is frequently assumed, chiefly the product of the labors of Hirobumi Ito and his secretaries who, in 1882–1883, studied constitutional systems in Europe preparatory to drafting the text of the fundamental law which the Emperor had promised in the celebrated rescript of 1881. Discussion of constitutional progress had begun as far back as 1867 and, immediately following the restoration, Meiji statesmen began the task of drafting projects of a constitution. Okubo, Goto, Kido, and Itagaki played leading rôles in urging the adoption of a national charter, and when Okubo and Kido relaxed their efforts, Itagaki initiated a popular campaign. Finally, in 1876, a formal commission of the *Genro-in* (Senate) was appointed to draft a constitution, while in 1880, its completed project was laid before the Emperor. This draft proposed a form of government having many features of the British parliamentary system. Along with the progressive memorial of Okuma, it drew the fire of Prince Iwakura, whose *Koryo* (theses), in 1881, after the forced resignation of Okuma from the Government, laid down the new basis of constitution-making upon which Ito later built.

Again, the fundamental law of Japan is not to be viewed simply as one written document. The *Kempo* (constitution) was far from being the only law proclaimed by the Emperor on February 11, 1889. On the same date, the Emperor decreed: (1) the Imperial House Law, regarding the succession to the Throne; (2) the Imperial Ordinance concerning the House of Peers, providing for the composition and procedure of the upper chamber of the Diet; (3)

[1] The author acknowledges assistance in the preparation of this study from a grant-in-aid given by the Social Science Research Council of New York City.

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the Law of the Houses, regarding the organization of both chambers of the Diet; (4) the Law of Election of the Members of the House of Representatives; and (5) the Law of Finance.[2] More than this, the cabinet was created by an imperial rescript issued four years prior to the proclamation of the constitution and the privy council by an ordinance one year prior to this event.[3] Finally, if the Japanese constitution is to be viewed as a pattern of national life, it is necessary to take into consideration a large body of custom and usage. For instance, the practice requiring the appointment of only high-ranking army and naval officers to the portfolios of war and marine is not prescribed in the constitution of 1889 nor in any law of the Diet; it was followed for years before it was expressed in an imperial ordinance.[4] Many such customs, not a few of them found in imperial rescripts and ordinances, are to be considered as parts of the fundamental law, and, indeed, are so viewed in the standard treatises on constitutional law.[5] Much of the custom and tradition, such as the *Kokutai* (fundamental principle of Japanese polity) and the *Iaku no Gummu* (supreme mili-

[2] The texts of all these laws and ordinances are found in convenient form in Hirobumi Ito, *Teikoku Kempo Koshitsu Tempan Gikai*, or "Commentaries on the Constitution and the Imperial House Law of the Empire of Japan" (Tokyo, 1889). The official English translation of these commentaries, together with the constitution and other laws, is entitled *Commentaries on the Constitution of Japan by Count Hirobumi Ito* (trans. by Miyoji Ito, Tokyo, 1889). There are two other editions of this translation under dates of 1900 and 1931.

[3] The imperial rescript creating the cabinet in place of the *Dajokwan*, or council of state, was issued as Imperial Proclamation No. 69, on December 22, 1885. See the *Horei Zensho*, or "Collection of Laws and Ordinances" (Tokyo, 1890), 1885, pp. 3, 1044. The *Sumitsuin Kansei oyobi Jimu Kitei*, or Imperial Ordinance Regarding the Organization and Procedure of the Privy Council, commonly cited as Imperial Ordinance No. 22 of 1888, is found in the *Nippon Ruiten*, or "Code of Laws" (ed. by S. Ichioka, Tokyo, 1889). An English translation, as published in Captain Frank Brinkley's *Japan Weekly Mail*, May 12, 1888, pp. 444–445, is reprinted in W. W. McLaren, "Japanese Government Documents," in *Transactions of the Asiatic Society of Japan* (Tokyo, 1914), Vol. XLII, pt. 1, pp. 127–132.

[4] In spite of the importance of the custom prohibiting the appointment of civilians as ministers of war and the navy, this practice found legal expression, and then only by implication, in the *fuhyo*, or attached list, of the Imperial Ordinance regarding the Organization of the Navy Department, No. 194, May 19, 1900, and in the Imperial Ordinance regarding the Organization of the War Department, No. 75, April 15, 1903. See the *Genko Horei Shuran*, or "Compilation of Laws and Ordinances in Force" (Tokyo, 1907), Vol. I, pt. iii, pp. 66, 104–105.

[5] Compare Yatsuka Hozumi, *Kempo Teiyo*, or "Principles of the Constitution" (Tokyo, 1910), Vol. I, pp. ii–v; Tatsukichi Minobe, *Kempo Satsuyo*, or "Principles of the Constitution" (Tokyo, 1932), pp. 98–118.

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tary command of the Emperor), find their roots in two thousand years of Japanese history.

PARTICIPANTS IN THE CONSTITUTIONAL DEVELOPMENT

The period 1867–1889, from the Restoration to the promulgation of the constitution, in its entirety, requires the attention of the student of the Japanese constitution. It should be added that constitutional development does not end with the year 1889, for the parliamentary system of Japan in 1890 is as different from that in 1930 as the British parliament of George I differs from that of George VI.

If the drama of constitutional development is viewed in relation to the actors, the *personae dramatis* in the opening scenes are few in number in comparison with the participants as the play unfolds. In the closing days of the Tokugawa shogunate, when the political equilibrium was destroyed, the absolutist government that had ruled Japan for centuries was broken, and a share in political control was given to a small group of *daimyos*, or feudal lords, and *kuge*, or court nobles. In a short time, a considerable number of *samurai*, or feudal retainers, were admitted to the governing class. Still later, under the pressure of popular demand, the national Diet was established, with, however, a very limited suffrage for the House of Representatives. Once the people were given a part in public deliberation, the suffrage by successive laws was increased until the year 1925 witnessed the establishment of universal manhood suffrage. And in the wake of this reform various *musanto*, or political parties of the working masses, have appeared and have pushed their way into the "bourgeois" Diet. But all this does not necessarily mean a consistent broadening of popular control over actual government. It may be said that the constitution was a compromise between the Choshu, Satsuma, Tosa, and Hizen clans, the bureaucrats and capitalism, and that an alliance of these interests dominated the government for three decades of parliamentary history. By the year 1918, the alliance had been shifted; political parties reached an understanding with monopolistic capitalism and were on the road to complete ascendency. Suddenly, in 1931, with the invasion of Manchuria, political parties were pushed aside by the militarists and bureaucrats, who now, in alliance with monopolistic capitalism, are the actual rulers of the Japanese Empire.

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THE IDEOLOGICAL BACKGROUND OF CONSTITUTIONAL DEVELOPMENT

Japanese constitutional development should be viewed also from the ideological aspect. Here we find that in the closing days of the shogunate the classical *Tendo* (way of heaven) inherent in Oriental political philosophy which emphasized loyalty to the Emperor met the impact of Occidental philosophy which defended the liberty of the individual.[6] The resulting conflux, which went under the name of *Tenchi no Kodo* (open road of the universe), was recognized in the Charter Oath of 1868. With the spread of translations of Western books came the doctrines of *Kogi Yoron* (free discussion and public opinion) by parliamentary means, of *Tempu Jinken* (natural rights of man) drawing heavily upon the philosophy of Locke and Rousseau, and of *Jiyu Minken* (civil and political rights). With the rise of political parties, Itagaki, Fukuzawa, and Okuma crystallized the doctrine of *Yoron Seiji* (government based on public opinion) and promoted propaganda campaigns for *Seito Naikaku* (government by a party cabinet) in imitation of the British parliamentary system.

In resistance to these popular demands, conservatives rallied around the doctrines of *Kintei Kempo* (a constitution emanating solely from the Emperor), *Kokutai Hoshu* (preservation of the *kokutai*, or fundamental principle of Japanese polity), *Rikken Zenshin* (gradual approach toward constitutional government), and *Taiken Naikaku* (a cabinet operating only under the imperial prerogative), together with a complete negation of political parties as a factor in the constitutional system. Both sides acclaimed the pre-Meiji doctrine of *Kinno* (loyalty to the Emperor). All of these conflicting aspirations were realized, in part, in the constitution of 1889. The clans, bureaucrats, and militarists, in alliance with capitalism, remained in control of the government. But political parties appeared in the first session of the Diet and soon began

[6] Compare Yasuzo Sasuhara, *Meiji Seishi*, or "Political History of the Meiji Era," in the *Meiji Bunka Zenshu*, or "Materials on the Cultural History of the Meiji Era" (ed. by Sakuzo Yoshino, Tokyo, 1928), Vol. I, pp. 33–47; Takeshi Osatake, *Nippon Kensei Shi*, or "Constitutional History of Japan" (Tokyo, 1930), pp. 18–33; and his *Ishin Zengo-ni okeru Rikken Shiso*, or "Constitutional Ideas of the Restoration Period" (Tokyo, 1929), pp. 1–37; Keiji Okamato, *Meiji-Taisho Shiso Shi: Kokka oyobi Kokumin Seikatsu no Jisso-o Josu*, or "History of Ideas in the Meiji and Taisho Eras: The Life of the State and the Nation" (Tokyo, 1929), pp. 19–81.

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their struggle to capture control of the cabinet on the plea that a parliamentary system on the British model was not repugnant to the new constitution. After many defeats, political parties in a large measure achieved their objective in the period 1918 to 1931. In the early decades of the twentieth century, as the traditional political parties became more obviously the agents of monopolistic capitalism, their right to speak for the "submerged" masses was challenged by the new *musanto* (political parties of the working masses) imbued with Marxian dialectics. The invasion of Manchuria was followed by a rout of the political parties and a return to the transcendental cabinets that characterized the period when Prince Yamagata dominated the political arena, while the army sought to win the support of the masses by an ideological campaign which has borrowed from both Marxian doctrine and the classical *Tendo*.

DEMAND OF THE INTELLECTUALS FOR KOGI YORON

The enthusiasm for Western ways that engulfed Japan after the visit of Commodore Perry in 1853 had not been limited to studies of the science, industry, and education of Europe and America. Equal attention was directed to government and politics. The shogun's envoys who visited the United States and Europe in 1865, as well as the members of Prince Iwakura's mission, which included Okubo, Kido, and Ito, and which returned to Japan in 1873 after a two years' tour of both hemispheres, were impressed with the legislatures which they had inspected.[7] They found that parliamentary institutions were as characteristic of modern civilization as were the telegraph, the railway, the factory, anesthetics in surgery, or the capitalist system itself. A younger generation of Japanese who had mastered European languages seized upon the Western literature of government and political philosophy. In particular, scholars like Keiu Nakamura translated the standard essays and treatises on politics. Among early translations in Japanese were Rousseau's *Contrat social* and John Stuart Mill's *Liberty*.[8] Every year saw several new renditions of the political clas-

[7] Compare Takeshi Osatake, *Iteki no Kuni-e: Bakumatsu Kengai Shisetsu*, or "To Strange Lands: Accounts of the Envoys Sent Abroad by the Shogunate" (Tokyo, 1929).

[8] See the chronological table of political literature in the *Meiji Bunka Zenshu* (ed. by Yoshino), Vol. V, pp. 511–517; VII, pp. 551–573.

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sics. By 1875, four different translations of Montesquieu's *Spirit of the Laws* had come from the Japanese press. More than this, Yukichi Fukuzawa and other scholars published books interpreting Western political ideas for their countrymen. Natural rights as expounded by Locke and Rousseau, the preservation of liberty by means of the separation of powers as elucidated by Montesquieu, the political philosophy of the British utilitarian school, as well as the economic doctrines of Adam Smith, were explained in numerous works. Fukuzawa's *Eikoku Giji-in Dan* ("Talks on the British Parliament"), published in 1869, had a wide sale, and his *Gakumon no Susume* ("Promotion of Learning"), published in seventeen small volumes, in 1872–1876, had a sale of over one million copies. Many books included descriptions of the British parliamentary system—a mechanism which particularly captured the fancy of Japanese intellectuals. At the same time, schools founded by enthusiastic scholars continued the propagation of Western political ideas. One of these, Fukuzawa's *Keio Gijuku*, established in 1868, was the beginning of Keio University.[9] Later, more aggressive study centres, like the *Risshi Sha* (Aspirants' Club) in Tosa province, preached the gospel of *Kogi Yoron* and *Jiyu Minken*. As a result, throughout Japan, the intelligentsia talked of equality, liberty, public opinion, popular deliberation, separation of powers, and parliamentary government as glibly as of Western science, art, and industry.

THE CHARTER OATH AND THE SEITAI SHO OF 1868

The Tokugawa shogunate was fully aware of the demand for *Kogi Yoron*. In the memorable letter of resignation which Shogun Yoshinobu (Keiki) addressed to the Throne in 1867, he offered to surrender his political power on condition that the affairs of state be directed by the imperial court in conjunction with *public opinion widely collected*.[10] It is clear, however, that the public opinion to which the shogun referred was to embrace no more than an assembly representing the 276 daimyos or feudal lords. This may also have been the meaning of the first article in the first draft of the Charter Oath which the fifteen-year-old Emperor issued on April 6, 1868, reading: "We shall create an assembly on a wide

[9] See his unfinished autobiography under the title of *Fuku-o Ji Den*, or "The Autobiography of a Happy Old Man" (Tokyo, 1901).

[10] Compare Eiichi Shibuzawa, *Tokugawa Yoshinobu Ko Den*, or "Biography of Prince Yoshinobu Tokugawa" (Tokyo, 1917), Vol. VII, pp. 183–184.

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basis whereby to decide all governmental questions through public opinion (*koron*)," although Koin Kido at least seems to have intended a more extensive basis for ascertaining public opinion.[11] The oath was issued, of course, upon the advice of the small group of daimyos, court nobles, and samurai who had planned and achieved the restoration. Particularly Kimimasa (Kosei) Yuri, of the Echizen clan, Kotei Fukuoka (Tosa clan), and Koin Kido (Choshu clan) played leading rôles in its drafting and promulgation.[12] And, significantly, Fukuoka later admitted that the dire need of the imperial court for funds to finance the expedition against the northeastern daimyos partly dictated its issuance, while the business firms of Mitsui, Shimada, Ono, and others were asked to supply a large part of this military expenditure.[13]

On May 13, 1868, the statesmen of the restoration followed up the Charter Oath with the promulgation of the *Seitai Sho* ("Declaration of the Form of Government").[14] By this decree, the powers

[11] This document, called the *Gokajo no Goseimon* (Coronation Oath of Five Articles), was issued on April 6 (old style March 14), 1868. For the text of the oath as promulgated, see *Shimbun Shusei Meiji Hennen Shi*, or "Chronological Record of the Meiji Era Selected from Newspapers" (ed. by Yasumasa Nakayama, Tokyo, 1934), Vol. I, p. 21. The wording of the first article is somewhat vague. It reads: *Hiroku kaigi-o okoshi banki koron ni kessu beshi.* A variant of the translation given above is: "An assembly widely convoked shall be established and all measures shall be decided by deliberation." On the question of interpretation, see Junichiro Otsu, *Dai Nippon Kensei Shi*, or "Constitutional History of Japan" (Tokyo, 1927), Vol. I, pp. 213–215; Takeshi Osatake, *Nippon Kensei Shi*, pp. 36–40; and his *Ishin Zengo-ni okeru Rikken Shiso*, Vol. I, pp. 246–308; Takeshige Kudo, *Meiji Kensei Shi*, or "Constitutional History of the Meiji Era" (Tokyo, 1914–1922), Vol. I, pp. 105–112.

[12] See Viscount Kotei Fukuoka, *Gokajo no Goseimon to Seitaisho no Yurai ni Tsuite*, or "Regarding the History of the Imperial Oath of Five Articles and the Declaration of the Form of Government," in the *Meiji Kensei Keizai Shiron*, or "Papers and Addresses on the Development of Constitutional Government and National Economy in the Meiji Era" (ed. by the Kokka Gakkai, Tokyo, 1919), pp. 1–45. See also Chuta Tsumaki, *Shokiku Kido Ko Den*, or "Biography of Prince Kido" (Tokyo, 1927), Vol. I., pp. 913–918.

[13] *Meiji Kensei Keizai Shiron*, p. 21. Compare Eijiro Honjo, *Meiji Ishin Keizai Shi Kenkyu*, or "Studies in the Economic History of the Meiji Restoration" (Tokyo, 1930), pp. 359–406; Kiyosaku Nishino, *Hanseiki Zaikai Sokumen Shi*, or "Side Lights on a Half Century of National Finance" (Tokyo, 1932), pp. 116–123.

[14] For the text of the *Seitai Sho*, see the *Horei Zensho*, or "Collection of Laws and Ordinances," 1867–1868, Vol. II, pp. 31–34; *Dai Nippon Gaiko Bunsho*, or "Diplomatic Documents of Japan" (Compiled by the Research Service of the Foreign Office, Tokyo, 1936), Vol. I, pt. i, pp. 551–558. An English translation of the text, as published in the *Japan Herald* (Yokohama), Aug. 29, 1868, p. 1492, is given in W. W. McLaren, *Japanese Government Documents*, pp. 7–15.

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of government were concentrated in the *Dajokwan* (cabinet), which, however, was divided into three groups, namely, a *Giseikwan* (legislative office), a *Gyoseikwan* (administrative office), and a *Keihokwan* (judicial office). The Giseikwan was to be composed of an upper assembly consisting of *Gijo*, or councillors of the first class (limited to princes of the blood, court nobles, and daimyos) and of *Sanyo*, or councillors (including samurai as well as princes, nobles, and daimyos). The lower house was to be the *Kogisho*, an assembly of representatives of the feudal lords. In 1869, the Kogisho actually was convened, only to prove with promptitude its utter inadequacy; while the abolition of feudalism and the relegation of the daimyos to private life in 1871 obliterated the *raison d'être* of this assembly. Nevertheless, the *Seitai Sho* is to be viewed as a milestone in the constitutional history of Japan, for it applied, albeit in crude form, the principle of separation of powers. On the other hand, its importance as fixing for all time the *Kokuze* (guiding principles of the national polity), as claimed by Professor Hozumi and others of the conservative school of jurisprudence, is overstressed, for if Japanese constitutional development had stopped at this point there would have been no provision for popular representation.[15]

ITAGAKI AND THE POPULAR CAMPAIGN FOR A CONSTITUTION

Bureaucratic circles continued to favor the adoption of a constitution. In 1873, both Koin Kido and Toshimichi Okubo prepared papers urging the establishment of constitutional monarchy as a means of fostering national unity.[16] Among the Sangi, or imperial councilors, the most advanced advocate of representative institutions was Taisuke Itagaki, a samurai of the Tosa clan who already detected the incipient alliance between the Choshu and Satsuma clans for domination of the government.[17] Itagaki de-

[15] See his *Kempo Seitei no Yurai*, or "Historical Sketch of the Framing of the Constitution," in the *Meiji Bunka Zenshu* (ed. by Yoshino), Vol. IV, pp. 419–428.

[16] Compare Tsumaki, *Shokiku Kido Ko Den*, Vol. II, pp. 1559–1572; Magoya Katsuda, *Okubo Toshimichi Den*, or "Biography of Toshimichi Okubo" (Tokyo, 1910), Vol. III, p. 121; *Okubo Toshimichi Bunsho*, or "Letters and Papers of Toshimichi Okubo" (ed. by the Nippon Shiseki Kanko Kai, Tokyo, 1927–1929), Vol. VIII, pp. 109–111; Taisuke Itagaki, *Jiyuto Shi*, or "History of the Liberal Party" (Tokyo, 1910), Vol. I, pp. 37–45.

[17] Compare Itagaki's *Wagakuni Kensei no Yurai*, or "Development of Constitutional Government in Japan," in *Meiji Kensei Keizai Shiron*, or "Papers and Addresses on the Development of Constitutional Government and National Economy in Japan" (ed. by the Kokka Gakkai, Tokyo, 1919), pp. 176–181.

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and urging the Government to set up a legislative assembly elected by the people. The next step was the founding of a political party, the *Aikoku Koto* (Public Society of Patriots), with the aim of pressing the memorial upon the attention of the Dajokwan. Itagaki also founded the *Risshi Sha* (Aspirants' Club), a school for propaganda, in Tosa, which drew over 3,000 youths from all parts of Japan. The wide publicity accorded the memorial by these means led to the appearance of many political organizations throughout Japan, and in 1875, a convention of delegates from these bodies, held at Osaka, gave concrete evidence that the new interpretation of *Kogi Yoron* had a wide popular following.

PARLIAMENTARY EXPERIMENTS

The Sangi were not indifferent spectators of this popular movement, and the defection of Koin Kido from the Government at this time increased their apprehension. Accordingly, under the guidance of Kaoru Inouye, in 1875, there was held the well-known

[18] Of the five resigning Sangi, only Takamori Saigo was of the Satsuma clan. Taneomi Soyejima, and Shimpei Eto were of Hizen, while Itagaki and Shojiro Goto were of Tosa.

[19] See Itagaki's *Wagakuni Kensei no Yurai*, pp. 186–188. See also the essay on the "History of Political Parties in Japan" by Professor Kazutami Ukita and Counts Itagaki and Okuma in Shigenobu Okuma's *Kaikoku Gojunen Shi*, or "History of Fifty Years After the Opening of Japan" (Tokyo, 1907), Vol. I, pp. 134–136.

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conference at Osaka ending with an agreement that the Government should prepare a constitution providing for a monarchy with a representative parliament.[20] Thereupon Itagaki and Kido reëntered the Government, while Kido, Itagaki, Okubo, and Ito were commissioned to study constitutional reform.[21] This was followed by the imperial proclamation of April 14, 1875, announcing the design of the Emperor to establish constitutional government, and, as a beginning, the immediate creation of a senatorial body (the *Genro-in*) and a supreme court (the *Daishin-in*).[22] Under this arrangement, the *Dajodaijin* (prime minister), the *Sadaijin* (left minister), the *Udaijin* (right minister), and the Sangi (councillors), together with the cabinet, still constituted the Dajokwan, or Council of State. The *Genro-in*, although a body of appointed members, was to serve as an embryonic legislature.

In June, 1875, the Government actually convoked an assembly of prefectural governors and admitted two delegates representing the people together with newspaper men as onlookers.[23] The newspapers, however, criticized the arrangement as inadequate, and this criticism led to the drastic Libel Law and Press Law of June 28, 1875, which brought the arrest of newspaper editors and ushered in the age of strict censorship.[24] Discouraged by the defection of Kido and Okubo, who were now more engrossed in the artificial development of Japanese industry, commerce, and finance by a policy of economic paternalism than they were in constitutional reform, the indomitable Itagaki again resigned as Sangi. Once more, as a private citizen, he championed the cause of democracy.[25]

[20] Tsumaki, *Shokiku Kido Ko Den*, Vol. II, pp. 1797–1809; Soho Tokutomi, *Okubo Koto Sensei*, or "Biography of Okubo" (Tokyo, 1928), pp. 372–378. See also Taisuke Itagaki, *Jiyuto Shi*, or "History of the Liberal Party" (Tokyo, 1910), Vol. I, pp. 182–188. The latter work was not written by Itagaki, but by Tomoi Uda and Saburo Wada, who compiled it under his supervision.

[21] Regarding the *Seitai Torishirabe I-in* (Commission for the Investigation of the Form of Government), see Tsumaki, *Shokiku Kido Ko Den*, Vol. II, pp. 1818–1820; Itagaki, *Jiyuto Shi*, Vol. I, pp. 190–191.

[22] *Horei Zensho*, 1875, p. 8. For an English translation, see W. W. McLaren, *Japanese Government Documents*, pp. 41–42.

[23] For an appraisal of the first session of the *Chihokan Kaigi* (Prefectural Governors Conference), which opened on July 20 and adjourned on July 17, 1875, see Takeshi Osatake, *Nippon Kensei Shi*, pp. 128–135.

[24] The *Zamboritsu* (Libel Law) and the *Shimbunshi Jorei* (Press Law) were promulgated in the *Dajokwan Fukoku*, or "Notifications of the Dajokwan," No. 110 and 111, July 28, 1875. Compare Sasuhara, *Meiji Sei Shi*, Vol. I, pp. 269–271.

[25] Itagaki's account of his resignation is found in his *Jiyuto Shi*, Vol. I, pp. 131–132.

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The Samurai rebellion in 1877 and the assassination of Okubo led to more governmental oppression of the press. As a result, intellectuals were so distrustful of the Government that its decision in 1878 to create elective assemblies in the prefectures and cities was followed, not by applause, but rather by a renewed campaign for a national assembly.[26] Itagaki, with Kenkichi Kataoka and Hironaka Kono, labored to win a wider popular following for constitutional reform. Under their guidance, national conventions of the *Aikoku Koto* were held, and at the third one in 1880, at Osaka, representatives from ninety-seven societies with 87,000 members attended. On this occasion, the *Kokkai Kisei Domei Kai* (League for the Creation of a National Assembly) was formed, a petition for the opening of the Diet was adopted, and Kataoka and Kono were delegated to present it to the Dajokwan.[27] The bearers of the petition, however, encountered a stubborn Government, the Dajokwan rejecting it on the ground that there were no rules for the reception of memorials, and the *Genro-in*, on the ground that it was not in due form. The society now moved its headquarters to Tokyo and hounded officials with demands for a parliament. To escape this vexation, the Government decreed that all petitions must be forwarded through the prefectural governors.[28] Balked at this stage, Itagaki's followers again turned to the provinces with a campaign of popular education and agitation. Even under these rebuffs, the movement for opening the Diet gained ground. Among the new recruits was Prince Saionji, scion of a noble family, who, upon his return from France in 1881, began the publication of a newspaper directed at the despotism of the Satsuma-Choshu clans and preaching the blessings of liberty.[29]

THE DRAFTING COMMITTEE OF THE GENRO-IN

The resignation of Itagaki from the Sangi in 1876 did not bring an end to the work of drafting a constitution. There is evidence

[26] For the Imperial Rescript of July 22, 1878, regulating the *Fukenkai*, or prefectural assemblies, see the *Horei Zensho*, 1878, pp. 12–15. For an English translation, see McLaren, *Japanese Government Documents*, pp. 272–276.

[27] Itagaki, *Jiyuto Shi*, Vol. I, pp. 331–377.

[28] The *Shukai Jorei* (Law Regulating Assemblies) was promulgated in the *Dajokwan Fukoku*, No. 12, April 5, 1880.

[29] See Yosaburo Takekoshi, *Toan Ko*, or "Prince Toan" (Tokyo, 1932), pp. 88–90. Prince Saionji soon withdrew as editor, but it is a significant fact that as a young man he openly opposed the Government.

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that Emperor Meiji sincerely regretted the delay in the promulgation of a constitution and was determined to secure action.[30] On September 4, 1876, the Emperor directed Imperial Prince Taruhito Arisugawa, the president of the *Genro-in*, to create a *Kokken Torishirabe I-in* (committee for drafting the constitution). This commission immediately began its labors and finished its first draft in October. Interrupted by the Satsuma revolt, the final draft was not completed until July, 1880, and was forwarded to the Throne in December of that year.[31] This remarkable report offered a constitution almost as democratic as the fundamental law that France had adopted in 1875. Borrowing heavily from the British parliamentary system, the draft provided that the Emperor, the *Genro-in* (Senate), and the *Daigishi-in* (House of Representatives) should share the legislative power. It was not this feature alone that aroused the opposition of the conservatives among the Sangi. They were offended, among other things, at the neglect which the project had shown the *kokutai* and the use of the Chinese term *Kotei* in place of the Japanese *Tenno* to designate the Emperor.

As the drafting of the project was reaching its final stages, Ito became alarmed and proposed that the *Genro-in* abandon its task.[32] It was due to Ito's remonstrances that the Emperor finally requested each Sangi to express his view in an *ikensho* (written opinion), a request that brought in reply the memorial of Okuma which created the ministerial crisis of 1881. Yamagata, Kuroda, Yamada, Inouye, Ito, and Oki replied in a conservative vein advising further delay in any announcement regarding the opening of a parliament.[33] Okuma, on the other hand, failed to give his opinion until the Emperor urgently pressed him for an answer.

[30] Compare Ikujiro Watanabe, *Meiji Tenno to Rikken Seiji*, or "Emperor Meiji and Constitutional Government" (Tokyo, 1935), pp. 79–81.

[31] *Ito Hirobumi (Hakubun) Hen: Kempo Shiryo*, or "Materials Relating to the Constitution Preserved by Prince Hirobumi Ito" (Tokyo, 1934), Vol. III, pp. 345–444. The written opinions of nine members of the *Genro-in* regarding the project of 1880 are in the Ito archives. *Ibid.*, Vol. III, pp. 396–442. See also the scholarly article of Sakuzo Yoshino on "Drafts of the Japanese Constitution Prior to Promulgation," in the *Kokka Gakkai Zasshi*, or "Journal of the Association of Political and Social Science" (Oct. 1928), Vol. XLII, pp. 293–304.

[32] See his letter of December 21, 1879, to the *Udaijin*, Prince Tomoyoshi Iwakura.

[33] Yamagata was the first of the Sangi to reply. See *Yamagata Aritomo Ko Den*, or "Life of Prince Aritomo Yamagata" (ed. by Soho Tokutomi, Tokyo, 1933), Vol. II, pp. 841–848. All of the *ikensho* are reprinted in Otsu, *Dai Nippon Kensei Shi*, Vol. II, pp. 370–410.

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The time was auspicious for a *coup d'état*. Under a heavy barrage of newspaper criticism regarding scandals in the sale of government properties in Hokkaido, the Government had steadily lost prestige. Here was the opportunity for Okuma (a Hizen clansman), the senior among the Sangi, to drive the Satsuma-Choshu bureaucrats from office, and, to this end, supporters of Okuma sought an alliance with Itagaki.[34] But the latter replied that inasmuch as scandals could not be avoided under an arbitrary government such as then existed, patriots should not stoop to turn one faction of officials out of power in favor of another faction, but rather should bend all their energies toward constitutional reform. It was at this juncture that Okuma joined the constitutionalists and threw consternation in the midst of the Sangi by a memorial to the Emperor proposing: (1) that the date of the opening of the parliament be announced to the people; (2) that the appointment of high officials be made in accordance with the popular will; (3) that there be a distinction between the civil service and political offices; (4) that the constitution be enacted by the Emperor; and (5) that the general elections for the parliament be held at the end of the year 1882 and the parliament be convened at the beginning of 1883.[35]

Many years later, among the archives of the Ito family, there was found a copy of Okuma's memorial made in Ito's own handwriting.[36] There are some who say that Ito purloined the document, for it was taken from the Emperor's portfolio without his permission. At any rate, the Choshu clansman studied the document with care and did not hesitate to arouse his colleagues to the danger lurking in Okuma's radical proposals. Their apprehensions were confirmed when news of the breach in the Dajokwan leaked out and when a popular cry for Okuma's leadership arose. Thereupon, a Satsuma-Choshu intrigue would have summarily ejected Okuma from the council of state had not the Emperor intervened.[37] As it was, Okuma was forced to resign. But his manoeuvre had won the day for constitutional reform. Largely upon the insistence

[34] Itagaki, *Jiyuto Shi*, Vol. I, pp. 501–502; Kenkichi Ichijima, *Okuma Ko Hachiju-go Nen Shi*, or "History of the Eighty-Five Years of Marquis Okuma" (Tokyo, 1926), Vol. I, p. 846.

[35] The text is in the *Meiji Bunka Zenshu* (ed. by Yoshino), Vol. III, pp. 433–438. See also Ichijima, *Okuma Ko Hachiju-go Nen Shi*, Vol. I, pp. 796–808.

[36] *Ito Hirobumi Hiroku*, or "Unpublished Papers of Hirobumi Ito" (ed. by Atsushi Hiratsuka, Tokyo, 1929), pp. 208–216.

[37] See Watanabe, *Meiji Tenno to Rikken Seiji*, pp. 92–96.

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of the Emperor, there issued the famous rescript of October 12, 1881, promising a constitution and the convening of a parliament by the year 1890.[38]

THE KORYO OF PRINCE IWAKURA

Following the imperial promise of a new constitution, Prince Iwakura, lending himself to the Satsuma-Choshu reaction, took the lead in throwing the proposals of Okuma into the discard and in settling for all time the basis of the new constitution.[39] Accordingly, he prepared his *Koryo* (Theses) and *Ikensho* (Opinions). The former read in part as follows:

(1) The constitution must take the form of *Kintei Kempo* (a constitution emanating solely from the Emperor). (2) The principle of *Rikken Zenshin*, or gradual approach toward constitutional government, must prevail. (3) The law governing succession to the Throne, which is to be enacted on the basis of those rules which have been observed since the days of the Imperial Ancestor, is not required to form part of the constitution. (4) The Emperor takes supreme command of the army and navy, declares war, makes peace, concludes treaties with foreign nations, directs coinage, confers honors and grants amnesties. (5) The Emperor in person appoints and dismisses and otherwise deals with all high officials of state. Cabinet ministers may or may not be members of the Diet. The organization of the cabinet shall not be subjected to intervention by the Diet.

(6) Except for those administrative affairs that are of fundamental importance to the state, for which all the ministers shall be jointly responsible, each minister shall only be individually responsible for administrative affairs placed under his own official jurisdiction. (7) With a view to dividing the legislative power, the legislature shall consist of two houses, the *Genro-in* (Senate) and the *Minsen Gi-in* (Popular National Chamber). (8) The *Genro-in* shall be composed of *Tokusen Gi-in* (members appointed by the Emperor) and *Kosen Gi-in* (members elected from among the ranks of the *Kazoku* (peers) and the *Shizoku* (former samurai). (9) The election law for the *Minsen Gi-in* shall include a property qualification upon the suffrage, while the electors for the *Kazoku* and *Shizoku* groups shall not be subjected to property restrictions.

(10) All legislative bills shall be initiated by the Government only. (11) Whenever an annual budget fails of passage before the end of the current tax-collecting period, for the reason of the impossibility of agreement between the Government and the Diet, or of the termination of the

[38] For the text, see the *Shimbun Shusei Meiji Hennen Shi*, or "Chronological Record of the Meiji Era Selected from the Newspapers" (Tokyo, 1935), Vol. IV, p. 471. An English translation, as published in the *Japan Daily Mail*, 1881, p. 1199, is printed in McLaren, *Japanese Government Documents*, pp. 86–87.

[39] More exactly, Prince Iwakura, who was then the *Udaijin* (right minister), acted in consultation with Prince Sanetomi Sanjo, who was the *Dajodaijin* (prime minister), and Prince Taruhito Arisugawa, who was the *Sadaijin* (left minister).

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session by the resolution of the Diet itself, or of the absence of a quorum in the chambers of the Diet, the Government may execute the provisions of the budget of the preceding year.

(12) The rights of citizens. (On this score, constitutional provisions of other nations should be consulted.)[40]

The *ikensho*, or opinions, that followed these fundamental principles minced no words in asserting the unsuitability of the British parliamentary form for Japan. The British king, said Prince Iwakura, is controlled by his parliament. His Government is at the mercy of the dominant party. The king is thus merely a figurehead, or rather a flag fluttering in the wind. Such an arrangement is the negation of the Japanese *kokutai*. To follow the British pattern would break with the Japanese tradition of centuries, whereas the Prussian system whereby the king rather than the parliament actually selects the cabinet comports with Japanese requirements.

The *Zenshin-shugi-sha*, or "gradualists," were in the saddle, and the Government tacitly accepted the *koryo* of Prince Iwakura as the basis of the drafting of the constitution. This victory, inevitable after the retirement of Okuma, gave a conservative, or even reactionary, momentum to the drafting of the constitution.[41] Obviously, proposals for more popular forms of government hereafter would have the disadvantage of contending against the accomplished fact. Time was not pressing, and inasmuch as the impetus for the movement in favor of obtaining *Kogi Yuron* through a parliament had come from Western lands, it was logical to make another official scrutiny of European institutions before the fundamental law was engraved in almost indelible words. Prince Iwakura, feeling the weight of passing years, turned over this task to a younger man.

[40] For the text, see Otsu, *Dai Nippon Kensei Shi*, Vol. II, pp. 411–419, 788–796. These documents bear the date of July 6, 1881. See also *Iwakura Ko Jikki*, or "Authentic Biography of Prince Iwakura" (ed. by Yoshimitsu Tsunoda, Tokyo, 1927), Vol. III, pp. 44–51; and *Iwakura Tomoyoshi Kankei Bunsho*, or "Documents Relating to Tomoyoshi Iwakura," (edited by Takematsu Otsuka and published by the Nippon Shiseki Kyokai or Commission for the Publication of the Historical Documents of Japan" Tokyo, 1927), Vol. III, pp. 142–147.

[41] Attention should be called to the great weight which the leader of the conservative school of jurisprudence, Professor Yatsuka Hozumi, always gave to the *koryo* of Prince Iwakura as the arbiter of all disputes regarding the question of ministerial responsibility under the constitution of 1889. See his *Kempo Seitei no Yurai*, or "Historical Sketch of the Framing of the Constitution," in the *Meiji Bunka Zenshu* (ed. by Yoshino), Vol. IV, pp. 419–428.

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THE DRAFTING OF THE CONSTITUTION UNDER THE SUPERVISION OF COUNT ITO

In March, 1882, Hirobumi Ito received the imperial command to lead a mission for the study of constitutional government in Europe.[42] In the same month, Ito assembled a group of brilliant assistants and was on his way to Europe. Most of this retinue were young men, familiar with European languages.[43] Arriving in Europe, Ito sent Prince Saionji and others conversant with the French language to Paris to study the constitution of the Third Republic. Ito himself, with a larger group, repaired to Germany and later to Austria. At Berlin, besides having interviews with Bismarck and other German statesmen, the delegation engaged the celebrated jurist Rudolf von Gneist for a course of lectures upon comparative constitutional law.[44] Although resenting the supercilious attitude of the German professor, the Japanese officials heard him to the end of his course. Then moving to Vienna, the Japanese delegation listened to a course of lectures by Professor Lorenz von Stein, who seems to have imparted more helpful information than his Berlin colleague.[45] At the end of each lecture, Ito himself put questions to the learned jurist, while Miyoji Ito, Naotane Yamazaki, and others took full notes. After their study in Vienna, the delegation assembled in Paris and later visited England. In London, the delegates attended Herbert Spencer's lectures on representative government given at the Athenaeum Club and wrestled with Alpheus Todd's ponderous tome on *Representative Government*.

In March, 1884, after Count Ito's return to Japan, the drafting of the constitution was undertaken. Ito distributed the task of actually preparing the texts among his secretaries as follows: (1)

[42] For the imperial rescript of March 3, 1882, commissioning Ito to travel abroad for the purpose of investigating European constitutions, see *Ito Ko Zenshu*, or "Complete Papers of Prince Ito" (ed. by Midori Komatsu, Tokyo, 1928), Vol. III, pp. 84–85.

[43] The group included Prince Kimmochi Saionji, Miyoji Ito, Tosuke Hirata, Tomosada Iwakura, Jun Kawashima, Taizo Miyoshi, Naotane Yamazaki, Katamitsu Hirohashi, and Masaharu Yoshida.

[44] Notes on the lectures by Professor Gneist under the title of "Seitetsu Yume Monogatari," or "Dream Talks of a Western Pundit," are published in the *Meiji Bunka Zenshu* (ed. by Yoshino), Vol. IV, pp. 429–496.

[45] A résumé of Professor von Stein's lectures, under the title of *Stein Shi Kogi Hikki*, or "Notes on Professor Stein's Discourses," was published by the Department of the Imperial Household in Tokyo in 1889. The text is reprinted in the *Meiji Bunka Zenshu* (ed. by Yoshino), Vol. IV, pp. 498–613.

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Ki Inouye had in charge the text of the constitution itself and the Imperial Household Law; (2) Miyoji Ito, the Law of the Houses; and (3) Kentaro Kaneko, the Law of Election of Members of the House of Representatives. As already mentioned, these assistants were of a younger generation than the statesmen of the Restoration. But if their youth deflected any sympathy with the *Koryo* of Prince Iwakura, Count Ito corrected any tendency toward British parliamentarianism. As the drafting progressed, the advice of foreign scholars and statesmen was sought from time to time, although the only foreign jurist residing in Japan frequently consulted was Dr. Carl Friedrich Hermann Roessler, of the faculty of law in the Imperial University of Tokyo, whose advice consistently inclined toward the Prussian rather than the British system.[46]

The drafting proceeded behind closed doors; popular curiosity was aroused and newspapers made efforts to ascertain the situation. In the autumn of 1887, a copy of an alleged draft was published and aroused wide comment.[47] Efforts at secrecy were redoubled, and indeed the final stages of the drafting occurred on the small island of Natsujima near Yokosuka. In 1888, the work of the experts was complete and the draft of the new constitution was laid before the Emperor.

REVISION OF THE DRAFT BY THE PRIVY COUNCIL

The procedure for the final deliberation and promulgation had already been determined. From the beginning, the principle of *Kintei Kempo* had prevailed; there was to be no constituent body for deliberation and ratification. Accordingly, Count Ito decided to establish one of the organs of the new constitutional system in advance of the promulgation of the constitution, for the purpose of definitive consideration of the text of the fundamental law. To this end, the Imperial Ordinance of April 28, 1888, created the privy council.[48]

[46] His advice on constitutional questions is found in *Ito Hirobumi Hen: Kempo Shiryo*, Vol. III, pp. 99–157.

[47] Compare Kametaro Hayashita, *Seikai Sokumenshi*, or "Sidelights on Political Circles" (Tokyo, 1925), pp. 380–384.

[48] The *Sumitsuin Kansei oyobi Jimu Kitei*, or "Imperial Ordinance regarding the Organization and Procedure of the Privy Council," commonly cited as Imperial Ordinance No. 22 of 1888, is found in the *Nippon Ruiten*, or "Code of Laws" (ed. by S. Ichioka, Tokyo, 1889), Vol. I, pp. 512–516. An English translation, as published in Captain Frank Brinkley's *Japan Weekly Mail*, May 12, 1888, pp. 444–445, is reprinted in McLaren, *Japanese Government Documents*, pp. 127–132.

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From May 25, to December 17, 1888, the privy council, in forty-one "constitutional sessions," fully debated the text of the constitution. There were also three special meetings, the last one being held early in February, 1889. All of the sessions were in the presence of Emperor Meiji save one, which was on the occasion of the death of his fourth son. Of the twenty-seven men (seventeen councillors and ten ministers) who, besides the Emperor, participated in these deliberations, the majority were conservatives if not reactionaries.[49] Only one of the outstanding leaders of the movement for constitutional reform, Count Okuma, was entitled to attend. But, as minister of foreign affairs, he was busily engaged in treaty revision and seldom came to the "constitutional sessions." Possibly his absence was due to his dislike of a dispute with Ito, whose mastery of constitutional questions was now superior. At least when Kaneko, years afterwards, asked Okuma to explain his abstention, the sage of Waseda replied that he was content to refrain from attendance upon the promise of Ito that the constitution would give the House of Representatives priority in the discussion of the budget and would give the Diet the *Joso-ken* (right to memorialize the Throne) and the right to initiate legislation.[50] Even with the absence of Okuma, the privy council was not so overwhelmingly conservative as is generally believed. There was Count Munenori Terajima, who stood very close to Count Okuma. There was Eifu Motoda, of the Higo clan, a scholar of Chinese classics and quaintly democratic. There was Viscount Koyata Torio, another scholar and a follower of the "golden mean," who demanded that the Diet should have the right of impeachment because this power was to be found in Chinese legislatures.

[49] The Councillors on the Privy Council included: Count Hirobumi Ito, Count Munenori Terajima, Viscount Kiyonari Yoshida, Viscount Tsunetami Sano, Count Sumiyoshi Kawamura, Toshikama Kono, Viscount Kotei Fukuoka, Count Takayuki Sasaki, Count Awa Katsu, Count Takato Oki, Count Michitoshi Higashikuze, Count Koyata Torio, Viscount Yajiro Shinagawa, Eifu Motoda, Count Taneomi Soyejima, Viscount Yasushi Nomura, Count Tomozane Yoshii. The members of the cabinet were: Count Kiyotaka Kuroda (prime minister), Count Shigenobu Okuma (foreign affairs), Count Tsugumichi Saigo (navy), Count Kaoru Inouye (agriculture and commerce), Count Akiyoshi Yamada (justice), Count Masayoshi Matsugata (finance and home affairs), Count Iwao Oyama (war), Viscount Arinori Mori (education), and Viscount Takeaki Enomoto (communications).

[50] See statement that Count Okuma made to Kentaro Kaneko. Kaneko, "Historical Sketch of the Framing of the Constitution," in the *Meiji Kensei Keizai Shiron* (ed. by the Kokka Gakkai, 1919), pp. 83–87.

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A study of the deliberations of the privy council is hampered by the fact that all of its sessions were secret. And furthermore, no authentic copy of the draft of the constitution laid before the Emperor by Count Ito has been published.[51] There is evidence, however, to the effect that Ito's draft of the constitution was amended in many respects, and that the modifications were in the direction of extending popular control rather than restricting it.[52] As to the safeguarding of civic rights, Ito's project followed European practice, and the second chapter of the constitution was devoted to the rights and duties of *shimmin* (subjects or citizens). It is significant that Ito, who with Matsugata and Kaoru Inouye was even then molding the new *laissez faire* policy for Japan, took particular care to protect property rights, and was responsible for the provision in Article XXVII, following the Prussian model, whereby confiscation of private property can be effected only by law whereas citizens may be deprived of other rights by imperial ordinance. This chapter of Ito's project was not altered. But the privy council greatly modified other parts of the project. There is evidence that Ito's draft did not give the Diet the authority to initiate bills nor the right to memorialize the Emperor.[53] It was Count Terajima, with the support of the Emperor, who took the lead in the amendment of the draft in these respects.

The text of the constitution and the accompanying laws were finally approved by the privy council and recommended to the Emperor. On February 11, 1889, on the coronation anniversary of *Jimmu Tenno*, the constitution was promulgated with the sign manual of the Emperor and the countersignature of the ministers.[54]

ADMINISTRATIVE REFORMS ON THE EVE OF PARLIAMENTARY GOVERNMENT

Count Ito and his colleagues in the Dajokwan had no intention of instituting the parliamentary system before the date set in the

[51] Not even the *Ito Hirobumi Hen: Kempo Shiryo*, edited by Atsushi Hiratsuka and Count Kentaro Kaneko, contains the text of this project.

[52] Regarding the evidence on this subject, see Otsu, *Dai Nippon Kensei Shi*, Vol. III, pp. 82–84; Watanabe, *Meiji Tenno to Rikken Seiji*, pp. 69, 116–124, 132; Osatake, *Nippon Kensei Shi*, pp. 364–373.

[53] Compare Itagaki's "Development of Constitutional Government in Japan," in *Meiji Kensei Keizai Shiron*, p. 254.

[54] *Kampo*, or "Imperial Gazette," Feb. 11, 1889, pp. 224–226; *Ito Hirobumi Hen: Kempo Shiryo*, Vol. I, pp. 1–38.

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rescript of 1881. But the modernization of the government, especially of the archaic administration, could not wait upon the proclamation of the constitution. Thus, after 1881, nearly every change of governmental form was in anticipation of the new régime. In July, 1884, the Imperial Household Department enacted the Peerage Law as preliminary to the establishment of an upper chamber under the constitution.[55] It was at this time that most of the prominent samurai who had achieved the restoration and the abolition of feudalism, and who still remained in office, were ennobled. Next came the problem of the new cabinet. The reform of the Dajokwan was a delicate task, for it meant nothing less than the separation of the imperial court (*kyuchu*) from the administration (*fuchu*). But under the guiding hand of Ito, and with the full approval of the Emperor, the problem was studied for two years. Finally, in December, 1885, Sanetomi Sanjo, the *Dajodaijin* (prime minister), was persuaded to retire and a *Naikaku*, or cabinet, on the model of European ministries, was created by imperial ordinance.[56] Ito, newly created a count, became prime minister (*naikaku sori-daijin*) and presided over a cabinet with nine ministers of state (*kokumu daijin*), each at the head of a department. Three years later, for the double purpose of serving as an exalted senate for solemn deliberation on the project of the constitution and of establishing for all time a special organ for the interpretation of the constitution, the privy council was established.[57]

[55] For the *Kazoku Rei* (Ordinance Regarding the Peerage), see the *Kunaisho Tasshi*, or the Notification of the Imperial Household Department, July 7, 1884; and the *Genko Horei Shuran*, or "Compilation of Laws and Ordinances in Force" (Tokyo, 1907), Vol. I, bk. vii, pp. 345–346. For an English translation, as published in the *Japan Weekly Mail*, July 12, 1884, p. 32, see McLaren, *Japanese Government Documents*, pp. 89–90.

[56] The memorial of Prince Sanjo and the Imperial Proclamation No. 69, December 22, 1885, creating the Naikaku in place of the Dajokwan, or council of state, is found in the *Horei Zensho*, or "Collection of Laws and Ordinances" (Tokyo, 1890), 1885, pp. 1–3, 1044–1046. For English translations of these documents, as published in the *Japan Weekly Mail*, Dec. 26, 1885, pp. 618–619, see McLaren, *Japanese Government Documents*, pp. 90–97. For the *Naikaku Kansei*, or Imperial Ordinance Regarding the Organization of the Cabinet, Nos. 1 and 2, February 26, 1886, see the *Horei Zensho*, 1886, pp. 19–27. Compare Kentaro Kaneko, "Reminiscences of the Initiation of the Cabinet System," in *Chuo Koron* (Tokyo), Feb. 1936, Vol. LI, no. 2, 115–122; Sasuhara, *Meiji Sei Shi*, Vol. II, pp. 126–129.

[57] The *Sumitsuin Kansei oyobi Jimu Kitei*, or Imperial Ordinance regarding the Organization and Procedure of the Privy Council, April 22, 1888.

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THE OPPOSITION ON THE EVE OF PARLIAMENTARY GOVERNMENT

The resignation of Okuma in 1881 added to the foes of the procrastinating Government a second great leader of the Opposition (*Zaiyato Shuryo*)—a term borrowed from British politics and frequently applied by Japanese intellectuals to the ex-councillors who in private life consistently criticized the Government. Already the Opposition was organized and could boast of a body of followers. The *Jiyuto*, the party founded by Itagaki in 1880, possessed both organization and a program.[58] Other parties took form, and Okuma himself accepted the presidency of one of them, namely, the *Rikken Kaishinto*, or Constitutional Progressive Reform party.[59] In the following years, these parties, sometimes in harmony and frequently without harmony, criticized the policies of the Government on the one hand and demanded a liberal constitution on the other. It was at this time that the devotion of Itagaki to constitutional reform led to the attempt upon his life at Gifu; when severely wounded, he pronounced the well known words: "Itagaki may perish, but not liberty." Hundreds of other intellectuals were equally devoted to the cause of constitutionalism and vigorously carried on the ideological campaign in the press and on the platform. The Government was irrevocably committed to the promulgation of a constitution before 1890, and it appeared unlikely that this pledge would be dishonored. Nevertheless, the Meiji statesmen, whose courage and perspicuity had achieved the restoration of 1867, had become more conservative as Japan's economic policy moved toward the *laissez faire* era, and, as we have already shown, within the Government there was strong pressure toward limiting the representative character of the new constitution. Thus, the agitation of political parties, led by such personalities as Itagaki and Okuma, served to remind the Government of the increasing demand of the intellectuals for the realization of parliamentary *Kogi Yoron*.

Suspicious of political agitation, the Dajokwan again resorted to oppression and applied the laws restricting public meetings and even prohibited both local and branch organizations of parties as

[58] See Itagaki, *Jiyuto Shi*, Vol. I, pp. 221–226.

[59] *Okuma Ko Hachiju-go Nen Shi* (ed. by Ichijima), Vol. II, pp. 1–4.

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well as communication between them. In 1884, the *Jiyuto* was constrained to dissolve as an organized party, although Itagaki and other leaders continued their criticism individually. In the following year, the *Rikken Teiseito*, a party fostered by the Government, also dissolved.[60] At the same time, Okuma resigned as leader of the Kaishinto, while this party gave up its register of names of party members. Two years of lessened party activities were followed in 1887 by the rise of the *Daido Danketsu*, a political union founded by Shojiro Goto, who attempted to collect a large assortment of political faiths and to attack the Government on both domestic and foreign policy. Although Goto, like Itagaki and Okuma, was of the group of samurai who played conspicuous rôles in the achievement of the restoration, his union received no quarter from the Government. The inability of the cabinet to wrest a treaty from the Western powers abolishing extraterritoriality aroused public indignation, and Itagaki again resorted to his device of assembling agitators in Tokyo to impress a demand for reduction of the land tax, revision of the treaties, and freedom of speech. The cabinet replied by using the Peace Preservation Ordinances to expel 570 prominent leaders from the capital.[61] In 1888, however, it bowed to public opinion to the extent of inviting Count Okuma to enter the cabinet as minister of foreign affairs with the arduous task of revising the treaties. After the promulgation of the constitution on February 11, 1889, and on the eve of the inauguration of the new régime, the Government renewed its efforts to mitigate friction between itself and the people. Count Goto was invited into the cabinet. His acceptance left Itagaki as the only outstanding ex-councillor as the period of constitution-making came to a close.

The Kuroda cabinet, however, did not live to meet the first session of the Diet. In December, 1889, a fanatic, enraged at Count Okuma's inability to win complete extinguishment of extraterritoriality, threw a bomb which destroyed the minister's right leg. The Cabinet then resigned and the new ministry, headed by Prince Yamagata, included Goto but not Okuma. By this time, the period of drafting the constitution had ended and the initial task of the

[60] This party, the Constitutional Imperial party, had been founded by Genichiro Fukuchi, Torajiro Mizuno, Sakura Maruyama, and other conservatives.

[61] The provisions of the *Hoan Jorei*, or Peace Preservation Law, of December 25, 1887 (Imperial Ordinance No. 67), were particularly severe. Compare Itagaki, *Jiyuto Shi*, Vol. I, p. 543.

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Opposition was completed. During the latter half of this period, the Opposition, in spite of the absence of a legislature within which it could direct its criticism against the Government, played an important rôle in the formulation of the constitution.

In conclusion, it may be said that the Japanese constitution of 1889 reflects the spirit of the remarkable period comprising the first twenty-two years of the Meiji era. The economic background of this period falls into three parts, each of which had its influence upon the constitutional scene. The first period, 1867 to 1878, dominated by Okubo and Kido, was the age of paternalism, when the Government by a process of state socialism sought to stimulate a rapid development of industry, commerce, and finance. Then followed the transition period, from 1878 to 1884, when the Government, relaxing its domination of economic enterprise, sought to return large enterprises to private hands. The drafting of the consitution was completed in the third period, when the policy of *laissez faire* guided the Government, and at the same time left its imprint on the constitution. Finally, it is erroneous to consider this document, as have many Western and even Japanese writers, as largely an imitation of European, and particularly of Prussian, patterns. At the same time, scholars of the conservative school of jurisprudence go too far in belittling the foreign elements in the constitution. In reality, the constitution is a compromise—a compromise between the varying participants in constitutional development, between antagonistic ideologies, and between Japanese tradition on one side and Western experience on the other.

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CONSTITUTIONAL DEVELOPMENTS IN SAORSTÁT EIREANN AND THE CONSTITUTION OF ÉIRE: II, INTERNAL AFFAIRS*

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The system of government set up under the Irish constitution of 1922 was of the parliamentary type. Provision was made for an Executive Council, some members of which were responsible to Dáil Eireann. The actual working executive was the president of the Executive Council. The old constitution also contemplated a group of expert ministers who should be heads of departments, but who should not share in the collective responsibility of the Executive Council to the Dáil. The appointment of such a group of "extern" ministers was not made mandatory.[35] In the first Dáil, three extern ministers were appointed, and in the second Dáil a fourth was added. This constitutional arrangement, the inspiration for which was derived from the Swiss executive, did not last long. The extern ministers were, as a matter of fact, active politicians; they were not appointed on the basis of merit in heading the specific departments;[36] in 1927, an amendment was adopted which practically abolished extern ministries;[37] and the Free State has since proceeded on the general plan of a cabinet collectively responsible to the Dáil.

The nominal executive created by the constitution of 1922 was the governor-general. Originally, the governor-general, representing the Crown, was given authority to reserve bills in accordance with "the law, practice, and constitutional usage governing the like withholding of assent or reservation in the Dominion of Canada." This power of the governor-general to reserve bills was formally abolished by constitutional amendment in 1933.[38] Although under the Cosgrave administration the governor-general played no significant part in the governmental machinery, under de Valera every effort was made to minimize the office. Mr. Timothy Healy served

* Part I of this article, dealing with "External Affairs," appeared in the October issue. MAN. ED.

[35] *Constitution of the Irish Free State (Saorstát Eireann) Act 1922*, Article LV.

[36] Nicholas Mansergh, *The Irish Free State; Its Government and Politics* (1934), p. 169.

[37] Constitution (Amendment No. 5) Act, 1927.

[38] Constitution (Amendment No. 21) Act, 1933.

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as governor-general from 1922 to 1929, and Mr. James McNeill served until 1932. Until the latter date, the official residence of the governor-general, the Vice-regal Lodge in Phoenix Park, was a social focus. In November, 1932, the King appointed Mr. Donald Buckley governor-general on the advice of the de Valera government. It was then stipulated that the governor-general should not appear at any public function, and a residence was provided in a Dublin suburb.[39] Thus was the office wrapped in obscurity. The governor-general retained formal functions in signing bills and in summoning and dissolving the Dáil. However, the majority in the Dáil fixed the date of meeting and of adjournment. The president of the Executive Council, having a majority in the Dáil, had the power to advise a dissolution. The governor-general had no authority to dismiss ministers; he was essentially the servant of the Government. When de Valera, in 1936, called for the removal of the office from the constitution, this was accomplished by constitutional amendment, and the governor-general obediently signed the bill providing for the abolition of his office.[40]

The original framework of the Saorstát government provided for a bicameral legislature. The upper house was the Seanad Eireann. Three methods were tried in fixing its composition between 1922 and 1936, when it was abolished by constitutional amendment.[41] The Saorstát does not have a federal system, the component units of which must be represented in an upper house; it does not have a titled aristocracy. It did not have any ready-made functional organization of society which could serve as a scheme of representation. Therefore, the question of selecting the Seanad Eireann has always been perplexing. Originally, the senate was given twenty-one days in which to suggest recommendations as to money bills.[42] It could delay bills, other than money bills, for 270

[39] *Irish Review and Annual*, 1936 (supplement to *The Irish Times*), p. 5.

[40] Constitution (Amendment No. 27) Act, 1936.

[41] In the first Seanad, half the members were nominated by the president of the Executive Council, and the other half elected by the lower house. The second plan used was that of the election of the senators by ballot throughout the Saorstát under a system of proportional representation with a single transferable vote. (Article LXXXII provided for the composition of the first senate; Articles XXXII and XXXIII provided for the second method.) Then, in 1928, a scheme of election by the two houses was introduced by constitutional amendment. [Constitution (Amendment No. 6) Act, 1928.]

[42] *Constitution of the Irish Free State (Saorstát Eireann) Act, 1922*, Article XXXVIII.

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days and, under circumstances specified in the constitution, a three-fifths majority of the members could demand a referendum.[43] In 1928, the power of the Seanad to refer bills to a referendum was abolished.[44] Subsequently, the period during which the Seanad could delay bills other than money bills was extended to twenty months.[45]

The death knell of the Seanad was rung after de Valera came into power. The upper house was no doubt performing a useful function in improving and delaying legislation, but it was over-weighted with Cosgrave influence. The impetuous Fianna Fáil majority in the Dáil accomplished the abolition of the Seanad by a constitutional amendment in 1936.[46] The Free State then entered upon an experiment with unicameralism. Since the old constitution permitted amendment by statute, the Dáil was not only a one-house legislature but also a one-house constituent assembly. This permitted the Fianna Fáil majority to jam through a basic constitutional amendment in very short order at the time of the abdication of Edward VIII.[47] The haste with which this could be done caused Cosgrave to remark in the Dáil that it was a mockery of democracy. In the constitution of 1937, provision is made for a new Seanad Eireann.

The 1922 constitution of Saorstát Eireann was a pliable one. Its flexibility was made possible by the constitutional proviso permitting the amendment of the constitution by simple legislative act for a period of eight years, or until 1930. In 1929, this temporary system of amendment was by constitutional amendment extended for another period of eight years.[48] Even the Dáil itself has not been immune from this process of tinkering; for example, the original constitutional arrangement allotting representation in the Dáil to the universities was abandoned in 1936.[49]

The trend in the Irish Free State between 1922 and 1937 was in favor of the power of the president of the Executive Council. Both

[43] *Ibid.*, Articles XXXVIII and XLVII.
[44] Constitution (Amendment No. 10) Act, 1928.
[45] Constitution (Amendment No. 13) Act, 1929.
[46] Constitution (Amendment No. 24) Act, 1936.
[47] See *supra*, in the October issue of this REVIEW, pp. 851–852.
[48] Constitution (Amendment No. 16) Act, 1929.
[49] Constitution (Amendment No. 23) Act, 1936. At the time of the general election of 1937, the size of the house had been reduced from 153 to 138 members.

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the senate and the governor-general were abolished in 1936. Meanwhile, the growth of the party system had been rapid and party discipline had reached a high level. Members of Fianna Fáil have been accused of being gramaphone voters, but it stands to reason that they cannot be expected to vote the opposition into power when party feeling has run so high. Since 1922, the Free State has seen the dominance of two major party leaders. With the support of the Cumann na nGaedheal party and other groups, Cosgrave served as president of the Executive Council from 1922 to 1932. In the latter year, de Valera brought Fianna Fáil into power with the support of Labour, and from 1933 to 1937, Fianna Fáil had an independent majority. In 1933, the old Cumann na nGaedheal party, the Centre party, and some other minor groups combined to form the Fine Gael or United Ireland party, making Cosgrave the leader of a substantial minority party in the Dáil.

In the general election of July, 1937, Fianna Fáil obtained 69 seats in a house of 138 members. One of these Fianna Fáil deputies was the Ceann Comhairle, Francis Fahy, who as chairman of the Dáil was entitled to automatic reëlection. Since he was entitled to vote only in case of a tie, this made Fianna Fáil dependent upon the support of either Independents or Labour for a working majority. The balance of the seats in the Dáil went to the parties as follows: Fine Gael, 48; Labour, 13; and Independents, 8.[50]

In 1933, there were 153 seats in the Dáil. Of these, Fianna Fáil obtained 77 and Labour 8. The balance went to the Cumann na nGaedheal, the Centre parties (later amalgamated as Fine Gael), and a few Independents. Thus the significant feature of the 1937 general election was the growth in the Labour vote. The number of Labour deputies increased from 8 in a house of 153 members to 13 in a house of 138; and this occurred in the face of the fine record of Fianna Fáil in social amelioration and in labor legislation. When the Dáil convened on July 21, Cosgrave opposed the reëlection of de Valera as president of the Executive Council on the ground that Fianna Fáil had not obtained a majority of the first preference votes cast at the general election.[51] However, Labour and some Independents left no doubt as to their desire that the Fianna Fáil

[50] *The Irish Press*, July 7, 1937.

[51] The totals were: Fianna Fáil, 599,638; Fine Gael, 461,176; Labour, 132,686; Independents 131,494; total for all parties, 1,324,994. *Ibid.*

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government should continue by voting with the latter for de Valera as president of the Executive Council.[52]

The development of two major parties and of party discipline has made for the stability of ministries. Bitterness between the major party groups, deriving from the Civil War, has led to strict party discipline. Irish party passions spring from roots that are strong and deep. They trace back to the Civil War, to feelings that die out only with the generation in which they were engendered. The parliamentary overturn in 1932, when de Valera first became president of the Executive Council, was no mere shifting of forces in the Dáil. It was more of a bloodless revolution than an ordinary parliamentary change-over. This intense party strife tended to make the constitution of 1922 a football of politics. An obvious example of this relates to the articles of that document pertaining to the initiative and referendum.[53] While Cosgrave was still in power, de Valera and Fianna Fáil fell back upon the initiative as a means of striking the oath of allegiance from the constitution. They obtained more than the necessary signatures and presented a petition to the Dáil. Soon after the petition was presented, but before it could be acted upon, the Cosgrave government brought in a bill to delete from the constitution the articles which authorized the initiative and referendum. This bill was passed and the constitution was so amended.[54] In this manner, the constitution of 1922 was repeatedly punctured by the moves of party strategy. The abolition of the senate in 1936 by the Fianna Fáil party is another illustration. Technically, the government of the Irish Free State from 1922 to 1937 was marked by legislative supremacy. Actually, rigid party discipline fostered the supremacy of the Executive Council.

The constitution of 1937 (Bunreacht na hEireann) provides for a national parliament to be known as the Oireachtas. The Oireachtas consists of the President of Ireland (Uachtarán na hEireann), of a lower house (Dáil Eireann), and of an upper house (Seanad

[52] *New York Times*, July 22, 1937. The vote was 82 for and 52 against de Valera.

[53] Articles XLVII and XLVIII.

[54] Constitution (Amendment No. 10) Act, 1928. Majorities in both the house and the senate voted that this constitutional amendment bill was necessary for the immediate preservation of the public peace and safety. In this way any referendum on the constitutional amendment bill was forestalled and the initiative and referendum articles were stricken from the constitution (see Nicholas Mansergh, *The Irish Free State*, 1934, pp. 143–144).

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Eireann), and the sole and exclusive authority to make laws for Ireland is vested in it. The parliament may not enact any law which is in any respect repugnant to the constitution. The authority to raise and maintain military or armed forces is vested exclusively in the parliament. War may not be declared, and Ireland may not participate in any war, save with the assent of Dáil Eireann. Each house is given authority to elect from its members a chairman and a deputy chairman, and to prescribe their respective powers and duties. Each house can make its own rules and standing orders.[55]

Every citizen, without distinction of sex, who has reached the age of twenty-one years is eligible for membership in Dáil Eireann, unless he or she is under a disability or incapacity resulting from the constitution or law. The right to vote for members of Dáil Eireann is extended to every citizen twenty-one years of age who is not disqualified by law and complies with the provisions of law relating to the election of members of the Dáil. Voting must be by secret ballot, and each elector has one vote. The constituencies and the number of members of Dáil Eireann are to be determined by law, but the ratio of representation may not be fixed at less than one member for each 30,000 population nor more than one member for each 20,000. The method of election must be the system of proportional representation with a single transferable vote. A Dáil may not continue longer than seven years after its first session, although a shorter period may be prescribed by law.[56]

The constitution of 1937 provides for a Seanad Eireann of sixty members. Eleven of these are to be nominated by the Taoiseach (prime minister) with their prior consent. Three are to be elected by the National University, and three by the University of Dublin. Forty-three are to be chosen in the manner provided by law from panels of candidates representing certain group interests. Before each general election of senators, nominations are to be made as determined by law to panels representing: (1) National Language, Literature, Art, and Education; (2) Agriculture and allied interests and Fisheries; (3) Labour, whether organized or unorganized; (4)

[55] Questions in each house, except as otherwise provided, are determined by a majority of the votes of the members present and voting, other than the chairman or presiding officer. The chairman or presiding officer has and shall exercise a casting vote in cases of ties. A quorum is determined by the standing orders of each house. No person may be at the same time a member of both houses. (*Bunreacht na hEireann*, 1937, Article XV.)

[56] Article XVI.

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Industry and Commerce (including banking, finance, accountancy, engineering, and architecture); (5) Public Administration and Social Services.[57] The constitution also permits a more direct type of functional representation to be fixed by law. The Oireachtas may by law authorize the direct election of a specified number of members of Seanad Eireann by any functional or vocational group or association or council.[58] The question of the composition and method of electing an upper house has been a perennial one in Saorstát Eireann. It is not surprising, therefore, that the new constitution contains only an outline sketch of the Seanad for Éire. Until the details are filled in by legislation, little can be said other than that the new constitution paves the way for an upper house which will reflect functional interests.

The constitution of 1937 provides for a cabinet responsible to Dáil Eireann. The cabinet is made up of not less than seven nor more than fifteen members, and is designated as "the Government." Subject to the provisions of the constitution, the executive power of Éire is exercised by or on the authority of the Government. War may not be declared, and Éire may not participate in any war, save with the consent of the Dáil. In case of actual invasion, the Government may take whatever steps it considers necessary to protect the state. If Dáil Eireann is not in session, it shall be summoned to meet at the earliest practicable date.[59] The responsibility of the Government to Dáil Eireann is a collective one. "The Government shall meet and act as a collective authority, and shall be collectively responsible for the Departments of State ad-

[57] Article XVIII. After the abolition of the Seanad in 1936, de Valera appointed a commission to consider the proper composition and functions of an upper house. The work of the commission resulted in divers opinions. De Valera was most impressed with a minority report which espoused the principle of functional representation. The late Chief Justice Kennedy was chairman of the commission. In general, the members of the commission were in agreement that the upper house should have only the power to delay bills and to suggest their reference to a referendum. In the draft constitution, de Valera provided for the election of the senators from the panels by a special electorate composed of every person who was a candidate for the Dáil at the last preceding election and who received more than five hundred first preference votes. As the debates on the constitution revealed disagreement over the method of electing senators, de Valera moved a government amendment to leave the question of the nature of the electorate to the ordinary law. However, proportional representation and a secret postal ballot were required. *The Irish Press*, June 10, 1937.

[58] Article XXIX.

[59] Article XXVIII.

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ministered by the members of the Government."[60] Every member of the Government has the right to attend and to be heard in each house of the Oireachtas.

The head of the Government, or prime minister, is known as the Taoiseach. He nominates a member to serve as Tánaiste. If the Taoiseach dies or becomes permanently incapacitated, the Tánaiste is authorized to act until a new Taoiseach is appointed. The Taoiseach, the Tánaiste, and the cabinet minister in charge of the Department of Finance must be members of the Dáil. While the other ministers must be members of either the Dáil or the Seanad, not more than two may be members of the latter. The Taoiseach may resign at any time by placing his resignation in the hands of the President. He may at any time, for reasons which seem sufficient to him, request a member of the Government to resign. If the member does not resign, the President may, on the advice of the Taoiseach, terminate the member's appointment. The Taoiseach must resign from office when he ceases to command the support of a majority in the Dáil, unless the President on his advice dissolves the Dáil and the Taoiseach obtains a majority in the reassembled Dáil after a general election. The resignation of the Taoiseach automatically accomplishes the resignation of the entire Government. The organization and distribution of business among departments of state and the designation of members of the Government to be ministers in charge are matters to be determined by law.[61]

The Taoiseach is designed by the constitution of 1937 to serve as the working executive. The office is obviously the counterpart of the president of the Executive Council under the 1922 constitution. In the debates in the Dáil, the Cosgrave forces singled out the legal power of the Taoiseach to force a member out of the cabinet by advising the President to terminate the member's appointment. It was urged that this would produce a cabinet of straw men. In other words, Government policy would be whatever the Taoiseach made it, and collective responsibility would be a myth. De Valera (as was often the case in the debates) was not moved at all by the arguments of the opposition; he stressed the

[60] Article XXVIII, sec. 4, par. 2.

[61] Article XXVIII. The opposition suggested to de Valera that "Prime Minister" rather than "Taoiseach" be used in the English version of the constitution, but he refused.

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importance of the Taoiseach's having the legal authority to dispense with the services of a cabinet member who would not coöperate.

Under Bunreacht na hEireann, the President, or formal executive, is to be elected by direct vote of the people. Every citizen having the right to vote at an election for members of Dáil Eireann has the right to vote at an election for President. The voting must be by secret ballot and by the system of proportional representation with a single transferable vote. The president holds office for seven years unless before the expiration of his term he dies, resigns, becomes permanently incapacitated, or is removed from office. He is eligible for reëlection, but not to a third consecutive term.[62] Every citizen who is thirty-five years old is eligible for election as President. The President may not be a member of either branch of the legislature; if a member of either house is elected to the office, he is deemed to have vacated his seat in the legislature.[63]

The President may be impeached by a two-thirds vote of the total membership of either house. If either house votes an impeachment, the other house must investigate or cause the charge to be investigated. A two-thirds vote of the house making the investigation is necessary to sustain the charge against the President and remove him from office.[64]

Formally, the powers of the President under the new constitution are large. Actually, this is not the case, since most of the President's acts are to be undertaken on the advice of the Taoiseach or some other constitutional officer or officers. On nomination of Dáil Eireann, the President appoints the Taoiseach; on nomination of the Taoiseach, and with the previous approval of Dáil Eireann, he appoints the other members of the Government. Also, on advice from the Taoiseach, he summons and dissolves Dáil Eireann; but he may in his absolute discretion refuse to dissolve the Dáil on the

[62] Every candidate for election who is not a former or retiring president must be nominated by either (1) not less than twenty persons who are members of one of the houses of the Oireachtas or (2) not less than four administrative county councils, including county borough councils as defined by law. Former or retiring presidents may be candidates on their own nomination. (Article XII, sec. 4.)

[63] The President cannot hold any other office or position of emolument. He may not leave Ireland during his term of office except with the consent of the Government.

[64] Article XII, sec. 10. On the other hand, no action at law or in equity or other legal proceeding, civil or criminal, may be brought against a president during his term.

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advice of a Taoiseach who has lost a majority in that body. The latter proviso is designed to permit the President to decide in cases of a change of Government against calling a general election in spite of advice to that end tendered by a defeated Taoiseach. In summoning the Oireachtas, the President is not entirely dependent on the advice of the Taoiseach. After consultation with the Council of State,[65] he may convene a meeting of either or both of the houses. The President may, after consulting the Council of State, communicate with the Oireachtas by message or address on any matter of national or public importance. After like consultation, he may address a message to the nation at any time on any similar matter; but every such message or address must have received the approval of the Government.[66] Other powers and duties conferred upon the President include the supreme command of the defence forces. However, the exercise of this command is to be regulated by law. The President is empowered to pardon or to commute punishment imposed by any court exercising criminal jurisdiction; and the power of commutation may, except in capital cases, be conferred by law on other authorities.

It was charged by the opposition in the Dáil that the powers given the President were unduly extensive and might pave the way to a dictatorship. De Valera answered by pointing out that most of these powers were to be exercised only on the advice of or after consultation with other agencies.[67] He quoted for the benefit of those who saw a dictatorship behind the presidential office the language of Article XIII, section 9:

> The powers and functions conferred on the President by this Constitution shall be exercisable and performable by him only on the advice of the Government, save where it is provided by this Constitution that he shall act in his absolute discretion or after consultation with or in relation to the Council of State, or on the advice or nomination of, or on receipt of any other communication from, any other person or body.[68]

In spite of the charges of dictatorship made in the Dáil, it seems obvious that the intent of the constitutional language is to create

[65] See *post*, p. 1060.

[66] Article XIII. For a discussion of the President's rôle in signing bills, see *post*, p. 1063.

[67] *The Irish Press*, May 26, 1937.

[68] While the Constitution authorizes the conferring of additional powers and functions upon the President by law, no such power or function is exercisable or performable by him save only on the advice of the Government, or after consultation with the Council of State as determined by law (Article XIII, sec. 10).

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a titular executive, with authority to act generally on the advice of the Government or after consultation with the Council of State. Much of the charge of dictatorship was probably founded on the assumption that de Valera, who has been called the "unique dictator," would immediately seek the office of president for himself. When the campaign preceding the general election of July 1, 1937, was under way, de Valera announced that he preferred to serve as Taoiseach under the new constitution,[69] and less was heard thereafter about the dictatorial nature of the presidential office created by Bunreacht na hEireann.

Many of the acts of the President are to be performed on the advice of the Government; some, however, are to be performed only after consultation with a Council of State. This body consists of three groups of individuals: first, ex-officio members who include the Taoiseach, the Tánaiste, the Chief Justice, the president of the High Court, the chairman of Dáil Eireann, the chairman of Seanad Eireann, and the Attorney-General; second, every person able and willing to act who has held the office of president, of taoiseach, of chief justice, or of president of the Executive Council; third, such other persons as may be appointed by the President in his absolute discretion, no more than seven such persons serving as members at the same time. In cases where the constitution requires the President to consult the Council of State, an actual meeting must be called, and the members present shall have been heard before he takes action.[70]

Provision is made in the constitution of 1937 for the exercise of the office of president under enumerated circumstances by a commission to consist of the Chief Justice, the chairman of Dáil Eireann, and the chairman of Seanad Eireann, or specified alternative members. This commission is to function in the event of the absence of the President, or his temporary or permanent incapacity established to the satisfaction of the Council of State, or his death, resignation, or removal from office, or at any time at which the office of president may be vacant.[71] In the course of the debates in the Dáil, opposition arguments moved de Valera to amend the draft of the constitution to give this commission additional power. Deputy Patrick McGilligan, of the Cosgrave opposition, elaborated upon the point that the President might refuse

[69] *New York Times*, June 17, 1937.
[70] Article XXXI. [71] Article XIV.

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to perform ministerial acts. In other words, where required to act on the advice of the Taoiseach, for example, the President might use his own discretion. What remedy would there be, short of impeachment? Pursuant to this line of argument, de Valera moved an amendment empowering this "presidential" commission to act when the President failed to exercise or perform within a specified time any power or function which, by the constitution, he was required to exercise or perform.[72]

The constitution of 1937 gives the balance of power to the Dáil and creates a complicated set of rules governing the authority of the Seanad to delay legislation. Provision is made also for presidential action in referring bills to the Supreme Court to test their constitutionality and to the people for a referendum. The authority of the senate depends upon the nature of the bill under consideration—whether it is an ordinary bill, a money bill, or a bill to deal with an emergency.[73]

An ordinary bill passed by the Dáil goes to the Seanad for a "stated" period of ninety days, or a longer period as may be concurred in by both houses. If an ordinary bill is "either rejected by Seanad Eireann or passed by Seanad Eireann with amendments to which Dáil Eireann does not agree, or is neither passed (with or without amendment) nor rejected by Seanad Eireann within the stated period, the bill shall, if Dáil Eireann so resolves within 180 days after the expiration of the stated period, be deemed to have been passed by both houses of the Oireachtas on the day on which the resolution is passed."[74] Thus, the senate may only delay an ordinary bill for a period of less than three months, provided Dáil Eireann wishes to take immediate action after the lapse of the "stated" period.[75]

A money bill may be initiated only in Dáil Eireann, and every money bill passed by the Dáil must be sent to the Seanad for its recommendations. If the senate makes recommendations, a money

[72] Article XIV. For example, if the President refused to terminate the appointment of a cabinet minister on the advice of the Taoiseach, the commission would have constitutional authority to act.

[73] For purposes of clarity, these are hereinafter described respectively as ordinary bills, money bills, and urgent bills.

[74] Article XXIII, sec. 1, par. 1.

[75] An ordinary bill also may be initiated in the senate. If, however, the house introduces amendments, it is then treated as a bill originated by the house. The senate may then delay for the "stated" period, and the house may or may not take conclusive action within a subsequent period of 180 days.

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bill must be returned within twenty-one days; and the house may then accept or reject any or all of the senate's proposals. If a money bill "is not returned by Seanad Eireann to Dáil Eireann within such twenty-one days or is returned within such twenty-one days with recommendations which Dáil Eireann does not accept, it shall be deemed to have been passed by both houses at the expiration of the said twenty-one days."[76]

An urgent bill is one which is immediately necessary for the preservation of public peace and security or necessary by reason of a public emergency, whether domestic or international. It need not endure the waiting period prescribed for ordinary bills in the Seanad. The constitution allows the Dáil to abridge the waiting period by resolution with the concurrence of the President after consultation of the latter with the Council of State. However, a law passed as an urgent bill expires ninety days after its enactment unless both houses in the meantime shall have agreed upon and specified by resolutions a longer period.[77]

Every proposal for an amendment of the constitution must be initiated in Dáil Eireann as a bill. Such a proposal must, in the first instance, go through the routine of ordinary bills. Then it must go to a popular referendum after it has been passed by both houses, or is deemed to have been passed by both houses.[78] For adoption, a constitutional amendment bill must receive at the referendum a majority of the votes cast thereon.[79] On the other hand, for a period of three years after the first President takes office, the constitution may be amended by an ordinary statute. This temporary arrangement was adopted to permit ease in the correction of any obvious flaws appearing in the constitution in its early operation. For a certain period, then, under the constitution of 1937, as was always the case during the operation of the con-

[76] Article XXI, sec. 2, par. 2. The constitution gives a detailed definition of a money bill and empowers the chairman of the Dáil to certify that a bill is a money bill. The Seanad may protest his rulings by asking the President to refer the question to a committee of privileges. If, after consulting the Council of State, the President decides to accede to the request, he appoints a committee composed of an equal number of members of the house and the senate and a chairman who must be a Supreme Court judge. The decision of the committee is final. If the President decides not to appoint a committee, or if the committee fails to report within a specified period, the certificate of the chairman of the Dáil is thereby confirmed (Article XXII).

[77] Article XXIV. A bill to amend the constitution may not be passed as an urgent bill.

[78] Article XLVI.

[79] Article XLVII, sec. 1.

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stitution of 1922, amendment of the fundamental law may be made by statute.

After a bill has been passed, or is deemed to have been passed, by both houses, the Taoiseach shall present it to the President for his signature and for promulgation as a law. Except as otherwise provided, the President shall sign the bill not earlier than five and not later than seven days after its presentation; an earlier date for signature may be used at the request of the Government and with the prior consent of Seanad Eireann. An urgent bill must be signed on the day of presentation. However, the President has certain limited options. In the case of bills other than constitutional amendment bills, money bills, and urgent bills, he may, after consultation with the Council of State, refer a bill to the Supreme Court for a decision on its constitutionality. If the Court finds any provision of such a referred bill unconstitutional, the President shall decline to sign the bill. Correspondingly, an affirmative decision by the Court must be followed by the President's signing of the bill in question.[80]

In the case of bills other than constitutional amendment bills, money bills, or urgent bills, the President may under certain circumstances have still another option. A majority of the members of Seanad Eireann and not less than one-third of the members of Dáil Eireann may by a joint petition request him to decline to sign and promulgate such a bill as law—on the ground that it contains a proposal of national importance on which the popular will should be determined. Such a petition must state the particular ground or grounds and must be presented to the President not later than four days after the bill is deemed to have been passed by both houses. The President must then consult with the Council of State, and must pronounce his decision within ten days after the bill is deemed to have been passed. If he declines to sign it, the bill cannot become law until it has been approved by a popular referendum (within eighteen months) or approved by a resolution of Dáil Eireann within a like period after a dissolution and a reassembly.[81]

[80] Article XXVI. In referring a bill to the Court, the President must take action not later than four days after presentation of the bill in question. The Court must pronounce its decision in sixty days. A decision of a majority of the judges constitutes the opinion of the Supreme Court.

[81] Article XXVII. When a bill goes to a referendum, it is deemed to have been vetoed if a majority of the votes cast thereon are against it and such negative majority amounts to not less than thirty-three and one-third per cent of the voters on

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The constitution contains five articles dealing with judicial organization. It declares that the courts shall include courts of first instance and a court of final appeal. The courts of first instance include a High Court and courts of local and limited jurisdiction. The High Court is invested with full original jurisdiction in and power to determine all matters and questions whether of law or fact, civil or criminal. The jurisdiction of the High Court also extends to the question of the validity of any law under the constitution. In all cases involving the validity of laws, the High Court alone can exercise original jurisdiction. The court of final appeal is to be known as the Supreme Court. Subject to such exceptions and regulations as may be made by law, it is given appellate jurisdiction from all High Court decisions.[82] The decision of the Supreme Court is final and conclusive in all cases.[83]

The judges of the Supreme Court, the High Court, and all other courts established under Article XXXIV are to be appointed by the President.[84] A judge of the Supreme Court or High Court may not be removed from office except for stated misbehavior or incapacity, and then only upon resolutions passed by the Dáil and the Seanad calling for his removal. The formal removal is made by the President. The remuneration of a judge of the Supreme Court or of the High Court may not be reduced during his continuance in office.[85]

The exercise of judicial powers by administrative commissions is possible under the Constitution. Nothing in the constitution shall operate to invalidate the exercise of limited functions and powers of a judicial nature, in other than criminal matters, by any

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the register. Unless vetoed in this manner, a bill is deemed to have been passed. This makes non-voters count for a bill. Article XLVII, sec. 2, par. 1.

[82] It also has appellate jurisdiction from such decisions of other courts as may be prescribed by law.

[83] Article XXXIV.

[84] According to Article XIII, sec. 9, this is only a formal power to be exercised on the advice of the Government. The Attorney-General is to be appointed, and may be removed, by the President on the advice of the Taoiseach. Although not designated as a member of the Government, the Attorney-General retires upon the resignation of a Taoiseach but may continue to carry on his official duties until the succeeding Taoiseach is appointed (Article XXX).

[85] Article XXXV. Subject to provisions of Article XXXIV and XXXV, the following matters under Article XXXVI may be regulated by law: "i. the number of judges of the Supreme Court, and of the High Court, the remuneration, age of retirement and pensions of such judges, ii. the number of the judges of all other Courts, and their terms of appointment, and iii. the constitution and organization of the said Courts, the distribution of jurisdiction and business among the said Courts and judges, and all matters of procedure."

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person or body duly authorized by law to exercise such functions and powers.[86]

Under the constitution of 1937, no person may be tried on any criminal charge save in due course of law. Minor offences may be tried by courts of summary jurisdiction. De Valera did not carry over Article IIA of the old constitution into the new. This article permitted, pursuant to an order of the Executive Council, the setting up of courts of military officers with authority to punish in certain cases. However, de Valera did provide in the new constitution for the creation of special courts by law "for the trial of offences in cases where it may be determined in accordance with such law that the ordinary courts are inadequate to secure the effective administration of justice, and the preservation of public peace and order."[87] The constitution, powers, jurisdiction, and procedure of these special courts may be prescribed by law. Thus de Valera continues to make it evident that his administration, no more than that of Cosgrave, will tolerate the use of force and intimidation by extreme Republicans. For the effective prosecution of such groups, it might be necessary to reëstablish some of the measures of Article IIA by law, and the new constitution takes cognizance of this possibility.

The three subjects relating to the new constitution which raised the most controversy in the Dáil were: the powers of the President; freedom of speech and of the press; and the rights of women. As to freedom of speech and of the press, the battle line was drawn with Fianna Fáil and Fine Gael supporting the respective sides of the ancient struggle between authority and liberty. The upshot of this controversy was that de Valera stood his ground on the draft section dealing with the regulation of the organs of public opinion. He accepted only an amendment protecting the liberty to criticize Government policy. Under Article XL of Bunreacht na hEireann, the state guarantees liberty for the exercise of certain rights, subject to public order and morality. Among these rights is proclaimed the right of citizens to express freely their convictions and opinions. This is immediately qualified, however, by language which declares that the state "shall endeavour to ensure that organs of public opinion, such as the radio, the press, the cinema, while preserving their rightful liberty of expression, including criticism of Government policy, shall not be used to under-

[86] Article XXXVII.
[87] Article XXXVIII, sec. 3.

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mine public order or morality or the authority of the State."[88]

De Valera said that in asserting the power of the state to regulate the organs of public opinion in the interest of public order and morality he was making it clear to the people that liberty is not absolute. He was setting "headlines" for the legislature to follow. He contrasted the arguments of the Cosgrave opposition with the record of Cosgrave in power. In power, Cosgrave, according to de Valera, ran a "coach-and-four" through the constitution of 1922 by adding Article IIA. This nullified the constitutional principle that no one could be tried except by due process of law and that extraordinary courts might not be created. The reply of the opposition was that de Valera had made use of Article IIA after he came to power. No argument of the opposition availed to change de Valera's mind on the article dealing with freedom of speech and regulation of the organs of public opinion. His only concession was a Government amendment to the draft constitution by which it was conceded that criticism of Government policy was included within the rightful liberty of expression of the organs of public opinion.

The position of women under the new constitution incurred some misunderstanding and considerable resistance from feminine voters. In the draft submitted to the Dáil, it was provided that acquisition of and loss of Irish nationality and citizenship should be determined by law. In response to various arguments, this section was amended by the Government to provide that: "On the coming into operation of this Constitution any person who was a citizen of Saorstát Eireann immediately before the coming into operation of this Constitution shall become and be a citizen of Ireland. The future acquisition and loss of Irish nationality and citizenship shall be determined in accordance with law. No person may be excluded from Irish nationality and citizenship by reason of the sex of such person."[89] Likewise, the article concerning eligibility for membership in the Dáil was amended to assert the political equality of women. As introduced in the Dáil, Article XVI made "every citizen" who had reached twenty-one years of age and who had not been placed under disability or incapacity by the

[88] Article XL, sec. 6, par. 1. Similarly, the right of citizens to assemble peaceably and without arms is declared, then qualified by the authority of the state to provide by law for the prevention or control of meetings determined in accordance with law to be calculated to cause a breach of the peace, or to be a danger or nuisance to the general public. Likewise, the right of citizens to form associations and unions is qualified by the authority of the state to enact laws for the regulation and control in the public interest of the exercise of this right. (Article XL.)

[89] Article IX, sec. 1.

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constitution or by law eligible to membership. In response to criticism, this was amended in the Dáil to include the phrase, "without distinction of sex."[90] Thus, in response to criticism of the opposition, de Valera reaffirmed the political equality of women, while at the same time protesting that the political equality of women had been established in the past; that it was no longer necessary to qualify constitutional clauses dealing with political rights by inserting phrases to indicate that there could be no distinction because of sex.[91]

While de Valera reaffirmed the political equality of women in several articles, he would not go farther. In the face of criticism from Fine Gael deputies, he would not change the force of the section dealing with the position of women in the home. He refused to accept any amendments to the following language: "In particular, the State recognizes that by her life within the home, woman gives to the State a support without which the common good cannot be achieved. The State shall, therefore, endeavour to ensure that mothers shall not be obliged by economic necessity to engage in labour to the neglect of their duties in the home."[92] Again, de Valera would not agree to any amendment to the opening section of the article on personal rights. This states: "All citizens shall, as human persons, be held equal before the law. This shall not be held to mean that the State shall not in its enactments have due regard to differences of capacity, physical and moral, and of social function."[93] Heated assertions on the part of the opposition that this language could be made to serve as the basis of discriminatory legislation against women in employment did not move de Valera to accept any change.

In response to controversy over the section dealing with the function of the state in protecting "workers," de Valera did move a Government amendment which reflects the intensity of the debates on the status of women. The draft constitution read: "The State shall endeavour to ensure that the inadequate strength of women and the tender age of children shall not be abused, and that women or children shall not be forced by economic necessity to enter avocations unsuited to their sex, age or strength." By a Government amendment, this language was changed to the following: "The State shall endeavour to ensure that the strength and health of workers, men and women, and the tender age of children shall not be abused and that citizens shall not be forced by eco-

[90] Article XVI, sec. 1.
[91] *The Irish Press*, June 3, 1937.
[92] Article XLI, sec. 2.
[93] Article XL, sec. 1.

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nomic necessity to enter avocations unsuited to their sex, age, or strength."[94] Beyond doubt, the opposition deputies tried to make political capital out of the question of the rights of women under the new constitution. De Valera knew this and accordingly discounted their views. On the other hand, it seems likely that de Valera underestimated the reaction on this point which his draft had set in motion. In the first place, he left the question of the political equality of women to be resolved by interpretation of the constitution and only under criticism inserted phrases preventing discrimination on the ground of sex. In the second place, in view of the active part played by Irish women outside the home in the struggle for national independence and in the life of Saorstát Eireann, the constitutional language emphasizing that in Éire woman's place was to be in the home rather than elsewhere antagonized the feminist vote. In the third place, fear of specific discriminatory legislation under broad constitutional clauses influenced groups of women interested in earning a living. The reaction on the question of woman's rights was one factor which diminished the overwhelming majority de Valera had hoped to obtain for the constitution.[95]

With respect to the family, marriage, religion, and private property, the constitution emphasizes Catholic teaching. Under it, the state guarantees to protect the family as the necessary basis of social order and as indispensable to the welfare of the nation and the state. The state agrees to guard with special care the institution of marriage. No law may be passed providing for the grant of a dissolution of marriage. The state acknowledges that man as a rational being has the natural right, antecedent to positive law, to private ownership of external goods. It recognizes, however, that the exercise of the right of private ownership and of the right to transfer, bequeath, and inherit property should be regulated by principles of social justice. The state recognizes the special position of the Holy Catholic Apostolic and Roman Church as the guardian of the faith possessed by the great majority of citizens. The state also recognizes the other religious denominations al-

[94] Article XLV, sec. 4, par. 2.

[95] During the campaign, a meeting of women graduates of the National University was held in the Mansion House in Dublin to protest the constitution as detrimental to women's rights in the state. To the contrary, the Cumann na mBan, an association of women who have played an active rôle in Irish political life, went on record in favor of the instrument. In a letter to de Valera, the association said it had taken "no part whatsoever in the seemingly organised drive against Bunreacht na hEireann by the Women Graduates' Association and other women's societies." *The Irish Press*, June 30, 1937.

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ready existing in Ireland and guarantees not to endow any religion. It guarantees to every citizen freedom of conscience and the free profession and practice of religion, subject to public order and morality.

The case for the constitution was presented and debated in the Dáil largely by de Valera himself. Few of the members of the Executive Council took any appreciable part. It appears from the number of quorum calls that many of the Fianna Fáil deputies were absent from the chamber while the debates progressed. They were never so far away, however, as to be inaccessible when a division was in order and de Valera needed votes to uphold his own draft of the constitution and to strike down an amendment put forward by an Independent, a Labour, or a Fine Gael deputy. At one stage of the deliberations he acknowledged that it had been essential to have one hand run throughout the entire document. The constitution was the supreme effort of the president of the Executive Council.[96] In the Dáil, the final vote was: for the constitution, Fianna Fáil, 61; Independent, 1; against, Fine Gael, 44; Labour, 1; Independent, 2; Independent Labour, 1.[97]

In the general election of 1937, de Valera devoted most of his campaigning to explanation of, defense of, and pleas for the new constitution. It is characteristic of the man that he explains over and over again to the people the principles on which he stands. The campaign revealed, if this was necessary, how profoundly de Valera felt about the new constitution, how much he hoped for a huge majority, how much he deplored the fact that it had become a party issue. Confident of a return to power, he asked the people to give Fianna Fáil a majority in the Dáil so there would be no need to bargain with any other group. In constituency after constituency, he carried on an aggressive campaign for the new constitution, pausing only on occasion to answer the attacks of the opposition against his administration. Meanwhile, Cosgrave and his supporters were minimizing the constitution and hammering away at the high cost of living. The results of the election must have been disappointing to de Valera and Fianna Fáil. Because the constitution was made an issue between the parties, it received

[96] In the fall and early winter of 1936, everyone talked about the new constitution, but no one seemed to know much about it other than what de Valera had said in public addresses. In an interview with de Valera in December, 1936, mention of the new constitution brought from the President the remark that he was working on it. However, he was quick to point out numerous "hurdles" which the constitution must clear: the consent of the Executive Council, of Fianna Fáil, of the Dáil, and of the people.

[97] *The Irish Press*, June 15, 1937.

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only a substantial rather than an overwhelming majority, and the growth of the Labour vote left Fianna Fáil with 69 deputies in a house of 138. At the conclusion of the poll, de Valera seemed to have two major alternatives: to carry on during the next four or five years with the support of Labour and a corresponding recognition of Labour's view, or to carry on in this way only temporarily and seek a fresh mandate in 1938 at a general election.

The constitution, according to Article LXII, comes into operation on the day following the expiration of 180 days after its approval "by a majority of the votes cast at a plebiscite thereon," or on an earlier day fixed by Dáil Eireann.[98] The first President is to enter upon his office not later than 180 days after the date of the coming into operation of the constitution. It has been bruited abroad that Sean T. O'Kelly, vice-president of the Executive Council, will be the choice of Fianna Fáil for the office of president. If de Valera is to seek a clear majority for Fianna Fáil in the Dáil by calling a general election in 1938, a logical scheme would be to hold a general election coinciding with a presidential election during the first six months of next year.

In internal affairs as in external affairs, de Valera, in the new constitution, has lived up to advance indications. He promised the Ard-Fheis of Fianna Fáil in November, 1936, that the constitution would follow in internal affairs the general system of government familiar to the Irish people. The new constitution does incorporate the familiar principles of a cabinet responsible to the lower house, and of an upper house with power to delay but not to obstruct legislation. The framework of the constitution of 1937 is basically that of the 1922 constitution, with additions and subtractions. The new President will be, in general, a nominal executive. As such, he will take the place of the governor-general. How he will use his discretionary powers, and to what extent he will prove influential in dealing with the Government, remains to be seen. The series of interrelationships between the Government, the President, and the Council of State will have to be clothed with custom as well as with the sheer constitutional fabric. If the past is any guide, however, the Taoiseach of Éire, like the president of the Executive Council of Saorstát Eireann, will be the dominant figure. In his work of reconstruction, de Valera wisely preserved much of the old material.

[98] In the absence of action by the Dáil, the constitution comes into operation on December 29, 1937.

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First Session of the Seventy-fifth Congress, January 5, 1937, to August 21, 1937. In an atmosphere of profound awe of the unprecedented popularity of Franklin D. Roosevelt, the members of the Seventy-fifth Congress convened, on January 5, 1937, for their first session. Many legislators were keenly conscious that their presence in Washington was due largely to that inspired political leadership which had produced tremendous Democratic majorities throughout the nation. With the surviving remnant of opposition benumbed and quiescent, the view was prevalent that the patriotic duty of Congress would be "to have the courage of the President's convictions."

Encompassed by such adulation, Mr. Roosevelt construed his electoral triumph as an importunate mandate to accelerate the enactment of the social policies for which he "had just begun to fight." Fearful, however, that administrative ineptitude and judicial dissapprobation would thwart the success of his program of social legislation, the President delayed the presentation of new substantive measures until after he had dramatically demanded drastic reorganizations of the executive and judicial branches. It was soon apparent that the inevitable consequence of these fundamental reforms would be to enhance the power of the presidency, and compel a readjustment of some traditional notions about our governmental mechanism.

Coincident with the realization by many citizens of the full import of proposed presidential innovations, aggressive leaders of labor were using novel tactics, generally considered illegal, in industrial disputes. The double challenge to historic legal and political traditions caused numerous voters to abate their zeal for reform and to react sympathetically again to old formulæ. While still paying homage to the leadership of Mr. Roosevelt, the obfuscated public also gave aid and comfort to those legislators who blocked the paths into which he sought to lead.

A spectacular battle ensued. The cohorts of the President maintained that the adoption of his proposals was indispensable to the ultimate success of American constitutional democracy. Only thus, they stoutly argued, could social amelioration be obtained and revolution and dictatorship averted. The existence of a strong executive, legally endowed with vast power and subject to popular control, was defended as the best possible antidote for irresponsible dictatorship. Contrariwise, the disciples of the *status quo* and the champions of alternative routes to social progress asseverated that augmented executive power, whether or not first grasped legally and peacefully, was invariably the prelude to despotism.

Thus, sincere believers in constitutional democracy, though espousing

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antithetical programs of avoiding dictatorship, spent the session in a forensic fracas. After nearly eight months of debate devoted largely to this fundamental problem confronting all democracies, Congress adjourned, weary and disconsolate. The vast army of Democrats which Franklin Roosevelt had led to victory was divided and battle-scarred. The bitterness of the internal strife was revealed on the last day, when, adjourning without having reorganized either the administrative or judicial branches, or enacted legislation sponsored by the President in collaboration with organized labor and agriculture, Senate Democrats vehemently indulged in mutual recriminations and threats of reprisal.

After the late August adjournment, both factions "took their cases to the country." Convinced that his Western journey again demonstrated the popularity of his program, the President has since called Congress into "extraordinary session." Whether he can, by holding in abeyance his court enlargement project, reform his majority and bring to fruition his other plans, will soon be discovered.

Organization. The House of Representatives, when it met, consisted of 332 Democrats, 89 Republicans, eight Progressives, and five Farmer-Laborites. One Republican seat was subject to a vigorous contest, still undecided.[1] A Kentucky vacancy was soon filled by a Democrat.[2] During the session, five Democrats and two Republicans died; one Democrat resigned. Four districts elected new members, none veering in party allegiance. Since adjournment, John P. Higgins, Democrat, has been appointed chief justice of the Massachusetts superior court. Nine other members, mostly Democrats, failed to respond on two-thirds of the House roll calls.[3]

The Senate was composed of 76 Democrats, 16 Republicans, two Farmer-Laborites, one Progressive, and George W. Norris, Independent. This includes Herbert E. Hitchcock, Democrat, of South Dakota, who, by appointment, had replaced Peter Norbeck, deceased Republican; and Senator Smathers who, due to the exigencies of New Jersey state politics,[4] did not take his seat until April 19. Senators Shipstead, Glass, Donahey,

[1] The resolution of the Committee on Elections, Number 3, to seat the Democratic contestant was recommitted with instructions to poll the 458 voters of Newton, a small New Hampshire town. *Record*, p. 11927. All references to the *Congressional Record* in this article are to the unrevised and unbound copies.

[2] The vacancy was created by the death of Glover H. Cary, Democrat, December 5, 1936.

[3] This is exclusive of Speaker Bankhead, who voted rarely, but does include Christopher D. Sullivan, leader of Tammany Hall, who spent most of his time in New York City. Most absences, however, were due to illness.

[4] The vote of State Senator Smathers was needed at Trenton by the local Democratic organization, which is now recalling A. Harry Moore from the United States Senate to run again for governor.

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and Norris had protracted absences due to illness. During the session, George L. Berry, long a leader of organized labor, was appointed upon the death of Nathan Bachman of Tennessee. No successor appeared for Joseph T. Robinson of Arkansas. When Hugo L. Black, of Alabama, resigned to become an Associate Justice of the Supreme Court, Governor Graves gave to his own wife the following credentials: "Reposing full trust in your prudence, integrity, and ability, I do, by virtue of the power and authority in me vested as governor of Alabama, hereby commission you a United States senator . . . to have and to hold the said office, together with all the rights, powers, and emoluments to the same. . . "[5]

Already at a record low, Republican membership was decimated in the 1936 election. Unable to prevent suspensions of the rules, the Republicans failed occasionally to muster sufficient strength to force a yea and nay vote on partisan issues.[6] This condition, while ordinarily conducive to irresponsible legislation, was counteracted by the fact that the majority party, lacking a dreaded enemy to unite it, found Republican weakness a divisive factor. The high tides of Democratic sentiment, sweeping farther north with each recent election, have left Republicans in half the states unrepresented in either branch of Congress. The only states now without Democratic representation are Maine, Vermont, and North Dakota. It is impossible for the Republicans to regain control of the Senate at the next election.[7] Were they to succeed in the House, the center of political gravity there would be shifted from the agricultural South to rural areas in New York, Massachusetts, and Michigan.

The speakership of the House went again to William B. Bankhead, first chosen in June, 1936. Bertrand Snell was unopposed as minority leader. The Farmer-Labor-Progressive conference unanimously chose Gerald J. Boileau, of Wisconsin, floor leader. Vigorous campaigns, however, were waged by John J. O'Connor, of New York, and Sam Rayburn, of Texas, to become majority leader and heir-apparent to the speakership. The usual sectional issue did not develop because Mr. O'Connor, due to his economic views and political trades, had secured the support of a considerable number of Southerners. Mr. Rayburn's following came largely from New Dealers of the North and West. Although the Presi-

[5] *Record*, p. 12055.

[6] " . . . the Yeas and Nays of the Members of either House on any question shall, at the Desire of one fifth of those Present, be entered on the Journal." Constitution, Art. I, Sect. 5, par. 3. For example, Republicans were unable to force a record vote on the bituminous coal bill, or the motion to recommit the Interior appropriation bill with instructions to reduce it by ten per cent. *Record*, pp. 2701 and 6350.

[7] As there is inadequate space on their own side of the aisle, thirteen Democrats must now sit behind the Republicans.

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dent averred his neutrality, Vice-President Garner's open endorsement of his fellow-Texan then appeared significant. Senator Guffey, among others, aroused ill-feeling by participating in the House contest in behalf of Mr. Rayburn, who eventually carried the Democratic caucus, 184–127.

Key Pittman, of Nevada, as president *pro tempore* of the Senate, frequently presided, especially during the extended vacation taken by Vice-President Garner in the midst of the court reform struggle. Charles L. McNary, of Oregon, continued as minority leader, although Arthur H.

IMPORTANT CONGRESSIONAL COMMITTEES, 75TH CONGRESS[8]

SENATE

Committee	*Democrats*	*Republicans*	*Others*	*Chairman*	*State*
Agriculture	14	3	2	Smith	South Carolina
Appropriations	19	5		Glass	Virginia
Banking-Currency	16	4		Wagner	New York
Commerce	14	6		Copeland	New York
Education-Labor	10	2	1	Black[9]	Alabama
Finance	16	4	1	Harrison	Mississippi
Foreign Relations	16	4	2	Pittman	Nevada
Interstate Commerce	16	3	1	Wheeler	Montana
Judiciary	14	3	1	Ashurst	Arizona
Military Affairs	12	4	1	Sheppard	Texas
Naval Affairs	13	4		Walsh	Massachusetts

HOUSE

Agriculture	17	7	1	Jones	Texas
Appropriations	28	11		Taylor[10]	Colorado
Banking-Currency	18	7		Steagall	Alabama
Foreign Affairs	18	7		McReynolds	Tennessee
Interstate Commerce	20	7	1	Lea	California
Judiciary	19	6		Sumners	Texas
Labor	15	5	1	Norton[11]	New Jersey
Military Affairs	18	6	1	Hill	Alabama
Naval Affairs	18	7		Vinson	Georgia
Rules	10	4		O'Connor	New York
Ways-Means	18	7		Doughton	North Carolina

[8] As of August 16, 1937. See *Record*, p. 11615.

[9] Mr. Black's resignation makes logical the choice of Elbert D. Thomas, of Utah, as chairman.

[10] When the session began, James P. Buchanan, of Texas, was chairman. His death resulted in the selection of the ailing Mr. Taylor as *de jure* head, and of Clarence Cannon, of Missouri, as *de facto* chief.

[11] William P. Connery, of Massachusetts, was chairman until his death in late June. Mrs. Norton resigned as chairman of the Committee on the District of Columbia to succeed him.

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Vandenburg, of Michigan, was the most active Republican opponent of the New Deal. Until his death in July, Joseph T. Robinson, of Arkansas, directed the Democratic army with extraordinary competence. In the ensuing brief but tense contest over the mantle of leadership, Alben W. Barkley, of Kentucky, supported mainly by the newer and liberal Democratic senators, defeated Pat Harrison, of Mississippi, by one vote. Thus the Senate majority is now led by one still serving his second term. Twelve of his Democratic colleagues have greater Senate experience by four or more years.

Sixty per cent of the representatives and half of the senators have now served less than five years in Congress. This tremendous turnover, due largely to the influx of Northern Democrats, has seriously affected committee structure. Each election has created numerous choice vacancies for those regularly returned from safe constituencies. Minor committees, however, are now operated by men with scanty legislative training. As the average experience, compiled last January, of House Democrats was five and a half years, and of Republicans nearly eight years, the small minority on most House committees knew its job better than did the majority. The average Republican, for instance, on the exclusive Ways and Means Committee had been in the House nearly nine years longer than his Democratic colleagues.

The table on page 1074 shows the present apportionment of committee positions among the parties. In the Senate, the ratio is variable as an accomodation to Republican incumbents who did not wish to be shifted. All minority members, except Ernest Lundeen, who requested otherwise, are assigned out of the Republican quota. Of the two Farmer-Laborites, Mr. Lundeen is ranked last among the Democrats, and Mr. Shipstead similarly among the Republicans. As a liberal gesture,[12] the Republicans permitted Senators La Follette and Norris to retain seniority privileges. Thus the former is now ranking minority member of both Finance and Manufactures, while the latter has a comparable standing in Agriculture and Patents. That they would regain chairmanships, were the Republicans to win control of the Senate, is doubtful.

In the House, third parties customarily receive committee assignments from the majority quota. The Republican conference punished Usher Burdick and William Lemke for disloyalty by placing them last on insignificant committees. Burdick promptly resigned all assignments, stating: "I am not in sympathy with the present leadership of the Republican party in this House and will not accept this demonstration of party punishment."[13] The Farmer-Labor-Progressive group was similarly displeased with its treatment by the Democrats. Only three major

[12] *New York Times*, December 23, 1936.
[13] *Record*, p. 293.

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committee assignments were received, whereas its numerical strength, if considered a separate party, would entitle it to ten. Mr. Boileau eloquently but ineffectually demonstrated also that his following, if consolidated with the minority, would have received privileges superior to those of comparable Democrats.[14] Due to the scarcity of Republicans, those surviving did obtain cherished positions easily in both houses. New members got on the best committees and veterans had a wide choice. In the Senate, most minority legislators served on six committees, most Democrats belonged to five.

The prestige value of the various committees can be estimated from the legislative experience of their members. At present, the members of the Ways and Means Committee average over twelve years in the House, and those on Rules over thirteen. By contrast, those on Labor have served five years, and those on Indian Affairs only four. To this latter committee, three third-party members have been relegated, yet three vacancies remain.

There is a tendency for committees to represent special interests, leaving the guardianship of the general welfare to the full houses and the Executive. Ex-soldiers seek places on the committee dealing with veterans; members from the farm states control the committees on Agriculture. Only four senators on Agriculture, three of them from cotton states, reside east of the Mississippi. Similarly, a large majority on Finance, the tax and tariff committee, represent industrial states of the North and East. Naval Affairs committeemen are usually delegates from shipyard or steel areas. Thus, legislation seems to be drafted by those representing producers rather than consumers.

In some instances, both senators from a state may belong to the same committee. This is true of Pennsylvania on Mines and Mining, and Kansas on Agriculture. It is less obvious why Nebraska and Nevada should each send two to Judiciary, or Idaho and Wisconsin be doubly protected on Foreign Relations. On this latter committee, the three senior members on each side live west of Lake Michigan, with only Maine, New York, and Georgia represented among the Atlantic Coast states. In the comparable House committee, the East is well represented, three of the seven minority members coming from Massachusetts.[15] Peculiarly, New Jersey, due to the belated addition of Mr. Smathers, is the only state among the eleven largest to be represented on Senate Post Offices, a majority of whose members serve states with four or less electoral votes.

Members attempt to avoid service on those committees which pay no

[14] *Ibid.*, pp. 250–259.

[15] The recent addition of the third Massachusetts member, Mrs. Rogers, to the Foreign Affairs minority, is supposedly motivated by her desire to participate more fully in diplomatic social activities.

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political dividends. The House Committee on the District of Columbia provides an illustration. When the explanation of a District bill was criticised, it was answered that: "It is a labor of love with the members who do serve on that committee. It is a gratuitous service for which you get no credit back home. The gentlemen would be surprised at the time it takes from one's own time in serving one's own constituency or the country."[16] Likewise with regard to those requested by the leaders to function as a committee of unofficial objectors to improper private bills: "I have discovered that after a man has done this work for one session or for one term he always has some very real excuse with regard to why he should not be asked to serve in this capacity a second time. I almost had to force the men on this side to take these positions and do the work."[17]

House and Senate differences over 51 measures, including 13 private bills, were reconciled by conference committees. Six minor bills remained in conference at adjournment. Except for private bills, where the standard ratio remains at three conferees from each house, these committees are growing larger. About one-third of the conferences on public bills were conducted by more than ten men. After bitter argument between the chambers over the form of the military appropriations bill, it was divided into two separate measures.[18] To confer over funds for the Non-Military Establishment, 11 senators faced eight representatives; over the Military Establishment, the ratio was seven to eight. Nine representatives contended with five senators over relief expenditures.

Procedure. The House of Representatives promptly adopted the rules of the previous House with only 31 dissenting votes.[19] In their application, however, there was unusual leniency this year. Especially during the early part of the session, unanimous consent "to address the House" was easily obtained. Two or more hours of a daily session were frequently devoted to these formal speeches on divers subjects. General debate on appropriation measures, moreover, was extensive and usually irrelevant. When sitting as a committee of the whole, *pro forma* amendments to "strike out the last word," or the "last four words," were numerous, thus gaining five more minutes *pro* and *con*. Even the rules committee was generous in its allotments of time. Minor measures at the session's close, such as those dealing with helium gas, or the reindeer industry in Alaska, received an hour,[20] but the rule for consideration of the neutrality bill granted ten hours.[21] Like most others this session, the latter was also an

[16] *Record*, p. 2482.
[17] Remarks of Mr. Snell. *Record.*, p. 5436.
[18] *Record*, pp. 8604–8615.
[19] *Record*, p. 13. The only organized opposition was among the third party members.
[20] *Record*, pp. 12117, 12149.
[21] *Ibid.*, p. 2621.

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"open" rule, giving freedom of amendment. The Foreign Trade Agreements Act was considered without benefit of rule, debate being restricted by unanimous consent to ten hours, later extended to twelve.[22]

Furthermore, important colloquies often developed from pretended objections to the unanimous consent agreements by which much of the business of both houses is transacted. "Reserving the right to object, and of course I shall not object, I just want to ask . . . " was a formula often employed to interpose questions. Representative Rich, of Pennsylvania, specialized in utilizing such requests as occasions for interjecting partisan jibes and for parading figures on Democratic daily deficits. In all formal debates, time is apportioned evenly between the two major parties, thus giving Republicans individually considerably more opportunity to talk.

Throughout the session, the representatives met oftener and longer than the senators.[23] The Senate, convening only two-thirds of the time for brief sessions, nevertheless kept its calendar cleared until the month before adjournment.[24] That several appropriation bills were passed after the new fiscal year began was due to their belated presentation by committees.[25] The responsibility for such delay is generally attributed to the confusion and excitement accompanying the court-reform struggle.

Though blessed with superfluous time, the Senate debated measures briefly until July. Important appropriations were discussed perfunctorily and voted. Occasionally, the upper chamber, by unanimous consent, voluntarily curtailed debate on such important measures as the neutrality, relief, foreign trade agreements, and fair labor standards bills. Once, however, when the new floor leader's signals were imperfectly executed,[26]

[22] *Ibid.*, p. 1012.

[23] During April and May, the Senate convened only 25 times, for sittings averaging less than three hours each. During this same period the House met 40 times in sessions averaging over four and one-half hours.

[24] On May 26, Senator Robinson stated: "The Senate has kept well up with its work during the present session, as is indicated by the small number of bills on the calendar. Until the committees report additional proposed legislation, there is little business of importance to be transacted in the Senate." *Record*, p. 6578. On March 8, he had said: "For the first time in my memory, at this advanced stage of the session there is no general legislation of importance on the calendar of the Senate other than the bill referred to by the senator from New York." *Record*, p. 2453.

[25] On June 23, Representative Taber stated with regard to the appropriation bills: "The calendar is in the worst condition I have ever known in my legislative experience." *Record*, p. 8099.

[26] Senator Barkley had requested the Vice-President to recognize Senator King, Walsh, or Sheppard upon the disposition of the helium bill. After plans had gone awry, Mr. Garner explained: " . . . the chair looked around and tried to find either one of the senators referred to standing. None was standing, but the senator from New York was on his feet and demanding recognition . . . . When three senators are on their feet demanding recognition, the chair has the privilege of choosing the

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Senator Wagner was recognized and succeeded in making an anti-lynching bill the unfinished business. A filibuster, led by a Texas senator, ultimately resulted in a compromise "special order" for consideration of the bill early in the next session.[27]

When Senator Robinson submitted the compromise judiciary reform bill as a substitute for the measure reported adversely by the committee, he grimly warned that if a threatened filibuster developed, it would be a case of ' "dog eat dog." '[28] Alleging that in a test of physical endurance he "would probably come out . . . better than those who are in opposition,"[29] an early vote was requested. As he had the votes necessary to control Senate procedure, recesses, rather than adjournments, were taken each day. Furthermore, to thwart dilatory tactics, a rule was enforced which forbade more than two speeches on a subject in one day. By interpreting the rule to mean "legislative," rather than "calendar," day, opponents were to be limited to two speeches each against the bill.[30] Furthermore, the president *pro tempore* decreed that a speech was completed when one yielded for anything other than an interrogation, even a quorum call.[31] A plethora of points of order and parliamentary inquiries, though time-consuming, failed to upset the chair's constrictive rulings. The opposition dared not appeal the decisions lest an adverse vote portend its ultimate defeat.

In retaliation, court bill opponents objected to all requests for unanimous consent. Even the Administration's farm bill could not be introduced until a new legislative day was begun. The court reformers agreed to consider "emergency" measures and conference reports if time limits were placed on discussion. As this qualification displeased Senator Wheeler and others, unanimous consent was lacking. For several days the deadlocked sides jockeyed for position, not only in the Senate but before the bar of public opinion. Senator Robinson's death, however, suddenly destroyed his majority and ended the drama. In the failure to complete this experiment in defeating a filibuster by a novel interpretation of the regular Senate rules, it is possible that a valuable precedent for the future was lost.

The bizarre history of the court reform bill affords yet another procedural novelty. After emasculation in committee, it again appeared before the Senate as an amendment to H. R. 2260. A brief explanation by its new sponsor was followed by desultory comment. Finding senators in-

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one to recognize; but when only one senator is standing and demanding recognition, the chair has no choice. When the present occupant of the chair was the presiding officer of another body, he could recognize a member in his seat and ask him to stand up." *Record*, p. 11160.

[27] *Record*, p. 11241.

[28] *Record*, p. 8795.

[29] *Ibid.*

[30] *Ibid.*, pp. 8919–8921.

[31] *Ibid.*, p. 9223.

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attentive, the Vice-President hurriedly put the measure to a vote and declared it adopted by unanimous consent. When the stunned senators, including the Democratic whip, realized what had transpired, they demanded the privilege of announcing their position on the bill. The Vice-President preëmptorily ruled that: "Without objection, all senators will have an opportunity to extend their remarks in the *Record* as to how they had expected to vote on this bill."[32]

Despite congressional inaction on several important proposals, more laws were enacted, both public and private, than in any recent first session. Probably more private bills were passed than in any year since 1907. To this abundance of bills the House contributed heavily; had not Senate committees failed to consider many House products, the total would have been higher. In the lower chamber, 1,506 measures were reported, a few adversely.[33] Of these bills, 710 were placed on the Private Calendar, now called on the first and third Tuesday of each month; 194 on the House Calendar; and 595 on the Union Calendar. From the House and Union Calendars, 531 bills were transferred to the Consent Calendar, called on the first and third Mondays. Of the 32 measures remaining on the Consent Calendar at the session's end, one had been "passed over without prejudice" six times, and several others four times. The purpose of the calendar seems to be defeated when, by unanimous consent, such dilatory devices may be substituted for an objection. Of the 1,294 measures reported in the Senate, all were placed on one calendar, which was frequently called for the passage of "unobjected bills."

The quantity of House legislation was augmented by the liberal use of Calendar Wednesday for measures not suitable for the Consent Calendar. Whereas during the entire Seventy-fourth Congress only eight Wednesdays were devoted to the call of committees, 20 were thus employed this year.[34] Every House committee except Memorials had three unrestricted opportunities to present cherished projects. On June 30, the Democratic leader declared: "This calendar has been called more in the last six months than in any four years of my experience in the House."[35] One bill, originally enacted on Calendar Wednesday,[36] was passed over the President's veto. Among the many bills thus passed were those dealing with the retirement of justices and the appearance of the attorney-general in constitutional cases. The former measure was respon-

[32] *Ibid.*, p. 10925.

[33] Instead of smothering resolutions aimed to embarrass the Administration, committees often reported them adversely, accompanied by comment from administrative departments. See, for example, the report of the Labor Committee, *Record*, p. 8531.

[34] There was not one Calendar Wednesday during 1936.

[35] *Record*, p. 8564. Speaking of the Immigration Committee, Mr. Dickstein said: "This is the first day we have had in 16 years." *Ibid.*, p. 3013.

[36] *Record*, p. 3466.

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sible for the retirement of Justice Van Devanter, and the latter, H. R. 2260, was the ultimate vehicle of the Senate court reform compromise.

Of the 27 discharge motions filed during the session, the only one signed by a majority of House members provided for the discharge of the Committee on Rules from the consideration of H. R. 1507, the Gavagan anti-lynching bill. Endeavoring to forestall a vote on this motion, the Judiciary Committee, on Calendar Wednesday, called up a milder proposal sponsored by Representative Mitchell, Illinois negro. When Mr. Fish, after an attempt at filibustering, "raised the question of consideration," the House voted not to consider the Mitchell bill.[37] Five days later, the Rules Committee was discharged from consideration of the Gavagan bill, which technically, the bill having never passed a standing committee, it had no power to consider.[38] By this anomalous method, a Democratic House, despite the fervent exhortations of prominent Southerners,[39] finally accepted an anti-lynching measure.

In March, Chairman O'Connor explained, in connection with the rule for consideration of the neutrality bill, that "The prime function of the Rules Committee is to serve the other standing committees of the House and the organization of the House. When it is considered that a measure is of sufficient importance to be laid before the membership for consideration, the Rules Committee acts, irrespective of the individual views of its members as to the merits of the proposals."[40] When the Fair Labor Standards bill, previously approved by the Senate and in fulfillment of a Democratic platform pledge, was reported favorably by the Labor Committee on August 7, it was expected that the Rules Committee would promptly give it the right of way. An alliance, however, of Southern Democrats and Republicans, comprising a majority of the committee, persistently refused to report out a special rule. As the project was too important to bring up under suspension of the rules, which permitted only 40 minutes of debate, and as it was too late in the session to use a discharge motion, the Administration was helpless. With impunity, these members usurped the function of law-making committees and defied a large majority of the House and the House leadership. Mr. O'Connor apologized thus: "Where I could borrow votes before to get out the Wagner bill and the Guffey coal bill, nobody is lending anything these days."[41]

[37] *Record*, pp. 4139–4141.

[38] *Vide* Mr. O'Connor's speech. He exclaimed: "I am against lynching . . . but I could hardly be asked to discharge myself from something with which I had nothing to do." *Record*, p. 4343.

[39] *Vide Record* for April 19, 1937. Even Speaker Bankhead asked that his name be called in order to register his opposition. *Record*, p. 4575.

[40] *Record*, p. 2764.

[41] *Ibid.*, pp. 11664. See also pages 11665–11667.

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Historically, the Rules Committee, officially the servant of the House, has often served as an agency of the White House in preventing the expression of House sentiment. Rarely before, however, have both House and Administration been checkmated by its strategically situated members. Nevertheless, had all factions of organized labor been enthusiastic for the drastically revised wages and hours bill, Chairman O'Connor would have experienced less difficulty in arranging sufficient "trades" with Southerners to get the proposal before the House. In the special session, his bargaining power will be augmented.

The region which supplied the chief opposition to the anti-lynching bill, and which checked the minimum wage and maximum hours project, also led a congressional attack on labor's new weapon, the "sit-down." The House Rules Committee revealed its conservatism in labor matters by favorably reporting a resolution to investigate "sit-down strikes." Though ably championed by those who fought the Gavagan bill, this new proposition "to curb lawlessness" was rejected by the politically-minded representatives, 236 to 149.[42]

One of the most heated controversies in the Senate involved the proposed Byrnes amendment to the bituminous coal bill. There was labor peace in the industry affected, yet Senator Byrnes capitalized the opportunity to force a vote on the "sit-down issue." Administration leaders, seeking to safeguard the President's precarious position of neutrality in the labor war, unavailingly attempted several parliamentary tricks to sidetrack the amendment.[43] After several days of maneuvering, a less politically harmful compromise was evolved. Administration leaders promised that if the Byrnes Amendment were defeated, a resolution, condemning not only "sit-downs" but the sins of employers also, would be promptly considered.[44] Political foes of the Administration were chagrined when the substitute proved to be a concurrent resolution which, unlike the expected joint resolution, did not require presidential action. Thus the condemnation of "sit-downs" and industrial spies was an expression of congressional opinion, and did not place Mr. Roosevelt "on the spot."[45]

Executive Leadership. As a political leader, Mr. Roosevelt has answered the cry for national unity prevalent in the United States as elsewhere in a choatic world. With parties sectionally controlled, and congressmen harnessed to their localities, the President, especially if he be a political genius, has superb opportunities for becoming the hero of the masses. As the trusted champion of the vast majority who seek the "more abundant life," Mr. Roosevelt was endowed with moral, but not legal, author-

[42] *Record*, p. 4215. [43] *Record*, pp. 3903–3930.

[44] *Record*, pp. 3978–3993. The vote on the amendment was 36–48.

[45] *Record*, pp. 4118–4133. The vote on the innocuous concurrent resolution was 75 to 3.

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ity to improve our social and economic order. Our Chief Executive was reëlected with a legislative mandate. Due to the separation of powers within our political parties, however, many Democrats elected to legislative office did not endorse the personal platform of the party's candidate for chief executive and chief legislator. Thus the President needed a different set of talents to appeal, not this time to the multitude, but to congressmen, each devoted to the interests of his particular district. In this respect, the President's achievements during the first session were not notable.

This does not mean that Congress undertook the function of legislation. With few exceptions, it remained the arbiter between conflicting pressures. The main difference between the past session and its immediate predecessors was the diminution of the group of loyal New Dealers who adhere to the British formula of allowing the Administration to govern, believing the interpretation of the government's actions before the people to be their special duty. The nature of Mr. Roosevelt's projects cost him much of this support. It is traditional that those who, yielding to other pressures, fail to ratify presidential proposals should disguise their opposition as an endeavor to maintain the integrity and independence of the legislative branch of government.

During the session, 63 formal messages were transmitted to Capitol Hill from the White House. In addition, Congress received 816 communications from the executive departments. On the session's second day, after verifying the count of electoral votes, the Congress listened to the President's annual message, the sixth address personally delivered by Mr. Roosevelt. In this unique situation, the President explained: "For the first time in our national history, a President delivers his annual message to a new Congress within a fortnight of the expiration of his term of office. While there is no change in the presidency this year, change will occur in future years. It is my belief that under this new constitutional practice the President should in every fourth year, in so far as seems reasonable, review the existing state of our national affairs and outline broad future problems, leaving specific recommendations for future legislation to be made by the President about to be inaugurated."[46]

Prior to the inaugural, however, "specific recommendations" began to arrive. Although administrative reorganization had long been on the agenda, the concrete plans proposed were more far-reaching than anticipated.[47] In early February, the drastic court-reform program descended upon Congress without warning, stunning even Democratic chieftains. The prestige of party leaders became seriously impaired, as they were

[46] *Record*, p. 87.

[47] For an excellent treatment of administrative reorganization in the Seventy-fifth Congress, see note by Joseph P. Harris in the October number of this REVIEW.

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often able neither to predict nor explain executive policies. "Surprise messages" joined "must legislation" on the list of congressional grievances against the President. Some executive dispatches, nevertheless, were warmly received. When the President proposed an investigation of tax evasion and avoidance by the affluent, Congress responded with alacrity, hopeful of finding a political scapegoat for diminished Treasury receipts.

Thirty-eight congressional products failed to gain legal effect, due to the President. Twenty-three of these measures were killed after adjournment by the pocket or absolute veto. Of the seventeen bills returned to Congress with the President's objections, two were repassed by more than a two-thirds vote and became law. This defiance of executive will was aided and abetted by powerful pressure groups, in one case organized agriculture, and in the other organized ex-soldiers.

Many measures, furthermore, to which the President ultimately affixed his signature were not to his liking. A strenuous effort to modify the sugar production and control measure before it reached his desk was unavailing.[48] Signing the bill reluctantly, the President verbally castigated the coalition of pressure groups responsible for its passage. The isolationist faction which sponsored the neutrality law had, by the Nye investigation, so effectively exploited nation-wide anti-war sentiment that apostles of other peace doctrines were helpless. Opposition to the neutrality bill was popularly deemed subservience to Wall Street and the munitions-makers. Thus Administration leaders, yielding several trenches, fought for presidential discretion in the application of the law. The compromise finally achieved, though severely restricting executive freedom, has not prevented Mr. Roosevelt from circumventing many of its mandatory provisions.

In no instance during the session was a previous grant of presidential power curtailed, even though originally bestowed under emergency conditions for limited periods. All expiring grants of discretionary authority, such as those to negotiate trade agreements or regulate the gold content of the dollar, were renewed by ample majorities. By off-stage bargaining, the relief and Interior appropriation bills were rescued from temporary majorities which sought to alter or earmark the funds requested. During consideration of the latter measure, an illustrative incident occurred. After several nugatory amendments had been voted, the leaders in charge, finding the House "not in condition to do business," and "not in as good humor as we usually are,"[49] were compelled to request the House to stand in recess until Messrs. Rayburn and Bankhead returned from the White

[48] The majority leader stated in the House: "I want to assure you that the President and all departments concerned are wholly opposed to these two paragraphs." *Record*, p. 10755. [49] *Record*, pp. 5984–5985.

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House with further instructions.[50] Were one to judge solely by Republican taunts, the conclusion would be inevitable that Mr. Roosevelt imperiously dictated all legislation.

The Constitutional Crisis. General debate prevailed during the winter of 1936–37 over methods of harmonizing New Deal legislation, approved vociferously by the voters, with the Constitution as applied by the courts. Among a wide variety of constitutional amendments seriously discussed were many proposals to delegate new substantive powers to the national government, and numerous procedural devices restricting the right of courts to invalidate legislative acts. The exponents of a revised fundamental law, nevertheless, were united only on the urgency of action and the method of formal amendment.

Mr. Roosevelt, however, after pondering both the difficulties involved in framing an amendment which would render the government adequate to modern exigencies, and the political task of securing its proposal by two-thirds of Congress, and ratification in 36 states, fell under the influence of a different gospel. It was contended by a few that the New Deal was not, or need not be, incompatible with the existing charter of government. The apparent incongruity, they alleged, was due to misinterpretation by the incumbent judges. They predicted that when "enlightened" justices ascended the bench, the conflict between Congress and the courts would subside. Most of those, moreover, who desired constitutional doctrine altered by "reinterpretation" were content to await patiently the toll of nature among the sitting "nine old men."

Mr. Roosevelt was not. He had already waited four years. In a startling move, with scant notice to his legislative coadjutors, he entreated Congress, February 5, 1937, to authorize the appointment of additional Supreme Court justices, not to exceed six, as aids to those who, having reached the age of 70 after ten years of service, failed to retire in six months. A similar provision was requested with regard to the inferior courts, where a maximum of 50 new appointments was suggested. While this was essentially an overt effort of the President to induce Congress to collaborate in getting the Supreme Court to change the Constitution, an attempt was made to camouflage the issue by worthy incidental reforms. The plan was originally presented to prevent "hardening of the judicial arteries" by encouraging retirement, to speed up justice, to obviate conflicting lower court decisions, etc. Later, after many had found this disguise too clever, the proposal was candidly defended as a short-cut method of amending the Constitution justifiable under the circumstances. If the American people were foolishly unwilling to renovate their archaic constitution by formal processes, as seemed to be true, it should be changed, as often before, by judicial decree, lest democracy perish. Con-

[50] *Ibid.*, pp. 5982–5985.

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stitutional democracy could be preserved best by simply "unpacking" the Supreme Court.

The President's message resulted in an almost unprecedented public furor. Protest mass meetings were held in New England towns; bales of critical telegrams and letters were sent to Washington; acres of editorial space were devoted to condemnation. The reform was attacked by those who, antagonistic to the New Deal program, cherished the existing court as a barrier to it. Numerous friends of social legislation, however, including Senators O'Mahoney and Wheeler, bitterly opposed this device for securing its legal validation. Whereas advocates of the President's plan were compelled to defend both its objective and method, its enemies were those who deprecated either. Moreover, the opposition almost monopolized the opportunities for emotional appeal. Though technically this proposal was among the most constitutional of New Deal projects, it was roundly damned as contrary to the spirit of the law and a menace to American institutions. Mr. Roosevelt was excoriated as a ruthless dictator seeking to remove the last vestige of constitutional restraint on his imperial sway. Even more than in the previous political campaign, articulate citizens were opposed to Mr. Roosevelt.

The legislative history of the President's contrivance began when Senator Ashurst, loyal head of the Judiciary Committee, stultified himself, in repudiating his earlier demands for a constitutional amendment, to espouse the new method. Protracted hearings were conducted by his committee, a parade of 85 witnesses offering 1,500,000 words of testimony.[51] After weeks of indecision, the committee acted, 10 to 8, to report the measure adversely. To the report a venomous opinion was attached flagellating the bill and its sponsor in scathing terms. This stinging rebuke to the President, their party chief, caused a reaction among some Democrats. Senator Robinson was now commissioned to salvage the wreck and endeavor to restore presidential prestige. Using persuasion, and mortgaging the patronage power, he marshalled a Senate majority for a compromise proposal[52] which would have represented a substantial Roosevelt victory. By advancing the retirement age to 75, possible new Supreme Court appointments were reduced to four, and not all simultaneously. Moreover, a limit of 20 was placed on additional judges for the lower courts, where the age-limit remained at 70. While in the throes of the Senate fight over this measure, Mr. Robinson suddenly died. Immediate desertions dissipated the court bill majority. The President subsequently capitulated, allowing his adversaries to write the final court act, an inconsequential concession to the demand for judicial reorganization.

Such a remarkable *dénoûment* to a political drama in which the Presi-

[51] *Record*, p. 12016.

[52] The amendment may be found in *ibid.*, p. 8727.

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dent played a leading rôle was accomplished through a variety of subplots. Paradoxically, the President suffered such a severe defeat on the main battle front because many citizens decided that he had already won, by flank attacks, most of the strategic positions involved. If his objective was to insure the constitutionality of vital New Deal measures, it was attained. The Supreme Court validated every contested New Deal statute brought before it during the session. The Social Security Acts were approved, astonishing lawyers but quieting the fears of millions. The Wagner Labor Relations Act was found satisfactory in another unexpected decision which incidentally mollified powerful court critics. Furthermore, the incumbents demonstrated that "enlightened" new justices were not needed to "reinterpret" the constitution. By reversing themselves on the question of minimum wages for women, statutes not long previously disapproved were found constitutional.

Under the leadership of Mr. Sumners, chairman of its Committee on the Judiciary, the House enacted several minor parts of the original proposal. That this was planned to aid the defeat of the main measure was revealed by Mr. Sumners later.[53] The Retirement Act was offered as "bait" to sitting justices to give Mr. Roosevelt a chance to make one or more regular appointments. Mr. Justice Van Devanter acted in accord with this scheme, nicely timing his retirement to have the greatest effect on the Senate Judiciary Committee. If Mr. Roosevelt had wanted to appoint a justice of the Supreme Court, his wish was now granted. Furthermore, the existing balance in the Court made the new appointee a pivotal man. With so much net gain from his Supreme Court engagement, a further attack by the President seemed unwarrantable. There was no longer a "constitutional crisis."

For the vacancy created in June by the retirement of Associate Justice Van Devanter, the Senate almost unanimously endorsed its majority leader, Joseph T. Robinson. Democrats deemed him worthy of such a reward because of his yeoman service as party leader; Republicans, knowing his native conservatism, would have rejoiced at his elevation by Mr. Roosevelt. In this dilemma, the President chose to procrastinate. He was unwilling to "consent" to this Senate "nomination" unless several other appointments were available simultaneously. Thus Mr. Robinson obtained a personal stake in the success of the court reform compromise bill. His death left the President free to select an unmitigated liberal, preferably one whose training was largely political. Mr. Roosevelt eschewed jurists who might "shrivel the constitution into a lawyer's contract."[54]

In August, upon the liquidation of the court-reform fight, the President

[53] *Record*, pp. 9259–9265.

[54] From the President's Constitution Day speech. *New York Times*, September 18, 1937.

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suddenly dispatched to the Senate the nomination of Hugo L. Black, a loyal New Dealer from Alabama. Although immediate approval, without committee reference, of the nomination of a senator to high office is customary, this time unanimous consent was lacking.[55] Only a cursory examination of Senator Black's past record was made by the Judiciary Committee, however, which, after a perfunctory hearing, recommended confirmation. On the Senate floor, the appointment was criticized because of the nominee's meager legal background, his intense partisanship, and alleged affiliation with the Ku Klux Klan.[56] Receiving assurance that he was not a member of that secret society,[57] and distrusting Senator Copeland's motive in pressing that issue, the Senate confirmed the nomination by a vote of 63 to 16.[58]

In his dealing with judicial matters, Mr. Roosevelt has not displayed the political acumen shown in other fields. Furthermore, his notorious "luck" has been sadly lacking. Subsequent to his original court-reform message, he suffered a concatenation of "bad breaks." These include Senator Robinson's death, the appointment of Mrs. Graves to succeed Senator Black, and the latter's unexpected former Klan associations. When these quondam "un-American" activities were confessed in an unparalleled radio broadcast by the new Justice, the President stood convicted of carelessness in fulfilling a high responsibility.

Pressure Groups. When a large and unified minority secures Administration support, its pressure on Congress is almost irresistible. Therefore it may seem anomalous that Mr. Roosevelt has had to call a New Deal Congress into special session to perform a neglected duty toward organized labor and agriculture. The absence of positive and specific programs by these powerful minorities provides one explanation. Moreover, the court quarrel kept all other measures in the background until late in the session.

The minimum wage and maximum hours bill, though requested by the President "to extend the frontiers of social progress,"[59] did not re-

[55] Senator Johnson of California objected to immediate confirmation. *Record*, p. 11214. Mr. Ashurst declared: "It is an immemorial usage of the Senate that whenever the Executive honors this body by nominating a member thereof that nomination is confirmed without reference to a committee, for the obvious reason that no amount of investigation or consideration by a committee of the Senate could disclose any new fact or shed any new light upon the character, attainments, and ability of the nominee, because if we do not know him after long service with him, no one will ever know him." *Ibid.*

[56] Only Senator Copeland pressed this charge. *Record*, p. 11622.

[57] Senator Borah stated: "There has never been at any time one iota of evidence that Senator Black was a member of the Klan. . . . We know that Senator Black has said . . . that he was not a member of the Klan." *Record*, p. 11651.

[58] *Record*, p. 11657. This was after a motion to recommit the nomination for further study was defeated, 66 to 15. *Ibid.*, p. 11656.

[59] In message to Congress, May 24, 1937. *Record*, p. 6455.

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ceive the fervid support of all labor factions.[60] Even prior to drastic modification in committee, labor leaders were hesitant in their endorsement. They were fearful that in acquiring new legal weapons in industrial relations the use of economic pressures might be restricted.[61] Had the fair labor standards bill appealed to them as a panacea, it is highly probable that it would have been enacted.

The political power of organized labor, however, was regularly revealed throughout the session. John L. Lewis intervened in behalf of the revised Guffey coal bill.[62] Letters from Mr. Green were quoted on a wide variety of subjects. Testimonials from the latter were submitted by both sides in the controversy over the sugar control bill. Mr. Inglesias, the Puerto Rican delegate, having observed the efficacy of this political technique, sought to emulate his mainland colleagues by introducing letters from the local Legion commander and Mr. Green. The latter had written: "I shall be pleased to speak to Marvin Jones and put in a good word for Puerto Rico relating to the importation of refined sugar into the United States from Puerto Rico, as you suggested in your letter dated June 25."[63] Furthermore, all strong minorities usually insist on record votes, so that congressmen may not escape political responsibility for their actions. At one time during Senate consideration of the wages and hours bill, there were 12 roll calls within a period of two hours.[64]

With regard to agriculture, the policy of the New Deal has been to secure agreement among administrative officials and heads of farm organizations prior to congressional action. The failure to achieve a united front is responsible for the current delay. Secretary Wallace's ever-normal granary plan of crop controls has not received the unanimous benediction of agrarian leaders.[65] Pending such a consolidation of strength, Congress has made a "token payment" in voting to give the farm bill

[60] In their national conclaves in October, leaders of both rival labor organizations spoke disparagingly of the pending bill, embarrassing Rules Chairman O'Connor in his effort to get the measure before the House. *New York Times*, October 22, 1937.

[61] *Vide* letter of William Green *in re* proposed Vandenburg amendments. "The amendments . . . are but a first step toward governmental control of unions—a step similar to that which led to the elimination of free trade unionism in Germany, Italy, and Russia." *Record*, p. 9997. [62] See letter in the *Record*, p. 2568.

[63] *Record*, p. 10965. Mr. Green's letter on the other side may be found in *ibid.*, p. 10701.

[64] *Record*, pp. 10266–10275. See also Senator Connally's analysis of another Green letter, p. 10251.

[65] In presenting the skeleton bill last July, Senator McGill explained: "The bill is in most of its parts a measure containing the provisions of proposed legislation recently briefly outlined in hearings before the Committee on Agriculture and Forestry by certain farm organization representatives and was worked out by them, as I am advised, in conjunction with representatives of the Department of Agriculture." *Record*, p. 9117.

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priority at its next session.[66] Further evidence of the vigor of the farm bloc is found in the repassage over presidential veto of a bill extending reduced interest rates on federal land bank loans.[67]

During the past session, the ex-service organizations were prominent in only one legislative victory. When the President vetoed an act renewing an expiring privilege with regard to level-premium war-risk insurance, little difficulty was experienced in mustering sufficient strength to override the veto.[68] The National Commander of the American Legion, however, in his annual report, scolded his followers for their apathy during the session. He explained: "Since 1932 we had been setting the stage for what could have been our big moment in the Congress of 1937. . . . The failure of our Universal Service Act to become a law was not due to the legislative blockade as much as to the apparent unconcern of the rank and file members of the American Legion. . . . While we rested, the opposition flooded Congress with barrage after barrage of letters, telegrams, and post cards, objecting to the passage of our bill. Time after time, your legislative representatives and I, personally, appealed for counter barrages, but apparently in vain. . . . But we have not yet been defeated, action has only been postponed."[69]

The battle over the neutrality bill was conducted largely by peace societies. Those who won the support of Congress now complain that the opposition group is more influential with the President in the application of the law. The American Bar Association gave mighty aid to the congressional enemies of the President's court scheme, and, allegedly, incurred a substantial deficit in doing so. The contest over the revised food and drug bill was almost a draw, those affected directly checking the larger number of interested consumers by better organization. During the final consideration of the housing bill in the Senate, page boys were utilized to distribute "propaganda" among the senators at their desks. Senator McNary exclaimed: "This is the boldest attempt to influence legislation I have seen in 20 years in the Senate. Doubtless the responsibility lies with the organization that is opposing the limitation on the cost of housing."[70] Senator Wagner rose to defend the pages, stating: "If that was improper, I take the full responsibility for it, and do not desire to have employees blamed. Perhaps I was wrong, but I thought that any kind of enlightenment on the subject we were considering was perfectly proper, and I suggested that the senators be given this particular information."[71]

[66] Senate Joint Resolution 207. *Record*, 12140.
[67] *Record*, pp. 8439–8443, 9553–9566.
[68] *Record*, pp. 3466, 6722–6726, 6741–6747.
[69] Report of Commander Colmery to annual convention of the American Legion. *New York Times*, September 20, 1937. [70] *Record*, p. 10635. [71] *Ibid.*

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The lobby receiving most unfavorable publicity during the session was that maintained by domestic sugar refiners. Despite characterization by the President as "the most pernicious lobby I have ever seen,"[72] it triumphed in Congress. In signing the measure after adjournment, Mr. Roosevelt explained: "The sole difficulty relates to a little group of seaboard refiners who, unfortunately, for many years were able to join forces with domestic producers in the maintenance of a continuing and powerful lobby in the National Capitol and elsewhere. . . . I am approving the bill with what amounts to a gentleman's agreement that the unholy alliance between the cane and beet growers, on the one hand, and the seaboard refining monopoly, on the other, has been terminated by the growers. That means that hereafter the refiners lobby should expect no help from the domestic growers."[73]

Politics. There was much evidence of politics in the 1937 session, as much as in the previous election year. Most of it, however, was personal and factional rather than bi-partisan. As in other years, Congress was used as a sounding board for personal campaigns for offices elsewhere. Representative Ellenbogen, hoping to abandon an active legislative for a judicial career, inserted in the *Record* several "extensions" suitable for future distribution. Upon becoming the Tammany candidate for the New York Democratic mayoralty nomination, Senator Copeland promptly began campaigning in the Senate. He exploited the Ku Klux issue against Mr. Black; he found "outrageous" Britain's plan to partition Palestine;[74] and to appeal to Harlem, he moved to attach an anti-lynching bill as a rider to a measure limiting to 70 cars the length of interstate trains.[75]

The history of civil service legislation during a session usually sheds light on political motivations. This year the President wrote: "Please let me urge upon the Congress the desirability of placing all but policy-forming positions under the merit system."[76] In the House, a measure was given a special rule which extended the classified civil service to include all postmasters. It provided that, at the expiration of their current terms, incumbents could be reappointed for life upon passing a non-competitive examination, thus "freezing" into the service many loyal partisans. New appointments were to be made by the Postmaster-General from a list of three certified by the Civil Service Commission. By making postmasters "inferior officers" to be selected by the Postmaster-General rather than

[72] *Ibid.*, p. 7689. See also p. 10743.
[73] *New York Times*, September 2, 1937.
[74] *Record*, p. 11139. [75] *Ibid.*, p. 9807.
[76] *Ibid.*, p. 6985. The President also demanded that the merit system be extended "upward, outward, and downward to cover practically all non-policy-determining posts." *Ibid.*, p. 222.

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by the President, senatorial confirmation would be obviated. The Representatives expected to "advise" the Postmaster-General which one of the three certified should be chosen.

The bill was attacked from every angle.[77] It was shown that under existing presidential ordinances the highest ranking candidate received the appointment. In the Committee of the Whole, Republicans, finding their "anti-freeze" amendments rejected, joined with Democratic spoilsmen to emasculate the measure. When a record vote was forced on final passage, however, the enervating amendments failed, and the bill was passed.[78]

This measure slumbered in a Senate committee throughout the session. When Senator O'Mahoney inquired about it in August, Senator McKellar replied that he had found "only four senators who are willing to say that they would vote for a bill taking away the right of confirmation of the Senate."[79] Contending that "from time immemorial it has been regarded as a prerogative" of House members "to suggest to the Post Office Department the persons to be selected as postmasters," Mr. O'Mahoney argued that Senate confirmation was "a mere formal gesture."[80] His dissenting colleagues, however, prevented any such infringement of the "constitutional power of the Senate."

The distribution of patronage between the houses was a continual source of friction during the session. The Senate sought to safeguard the public by stipulating that all employees earning less than four or five thousand dollars yearly be appointed under the merit system, while the remainder be subject to Senate scrutiny. The House, on the other hand, insisting that application of the merit system to petty officers was unwise, demanded that senatorial politics be eliminated among the better-paying positions. This controversy can be illustrated aptly by the remarks of Senator Walsh in presenting the conference report on the housing bill. He explained: "The House removed from the measure . . . every provision relating to the civil service laws or the Classification Act. . . . This difference was one of the most bitterly fought and contested features of the bill, and the result of our deliberations was that a compromise was reached which provides that all employees whose salaries or wages are in excess of $1,980 shall be exempt from the civil service laws. . . . They . . . resisted very strongly the provision in the bill as it passed the Senate that employees whose salaries are in excess of $4,000 should be confirmed by the Senate. A compromise was reached providing that employees whose salaries were in excess of $7,500 should be subject to Senate confirmation.[81] . . . Behind it all, I believe, is a growing feeling that this power in the Senate tends to make those in authority consult the

[77] *Record*, pp. 623–643.
[78] *Ibid.*, p. 643, and *New York Times* for January 29, 1937.
[79] *Record*, p. 10495. [80] *Ibid.* [81] *Ibid.*, p. 12281.

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members of the Senate rather than members of the House in matters of appointments."[82]

Although perfect party fronts were presented on no roll call during the session, the Republicans often achieved a fair degree of unanimity. Democratic whips, especially in the Senate, were infrequently able to muster 90 per cent of their huge forces for Administration measures. An old guard squad of Democratic warriors, however, believing implicitly in party loyalty, faithfully followed the President. They did not reason why; they obeyed orders. It is traditional that majority leaders in each house accept this rule of the political game. Thus Mr. Robinson bravely fought for measures which were not to his liking, and Alben Barkley, after becoming leader, voted hopelessly to sustain a presidential veto of a measure he had formerly sponsored.[83] This philosophy accounts for Senator Ashurst's amazing inconsistency on the question of judicial reform. Mr. Sumners, of the comparable House committee, reacted differently. Likewise Vice-President Garner, a veteran advocate of "follow the leader," is rumored to be wavering in his fealty to "the boss."

President Roosevelt endeavored to capitalize the sentiment of partisanship by making the court issue a Democratic cause. Addressing party "victory dinner" celebrants on March 4, his judicial reforms were proclaimed indispensable to the execution of Democratic campaign pledges.[84] Members of the party, however, could not be deterred from open rebellion. Furthermore, the Republicans, unanimously opposed to the court project, shrewdly declined to lead the fight lest they supply the Democrats with a rallying cry to party battle.

After internecine strife had exerted a devastating effect upon party morale, a unique plan was evolved to restore Democratic harmony. In June, the President repaired to an island in Chesapeake Bay where all male Democratic legislators were invited for an old-fashioned political picnic. Congress was adjourned so that members could attend with clear consciences. For three days, good fellowship and fraternity prevailed as Democrats joked, fished, and ate.[85] The President's "charm school," nevertheless, though it paved the way for the ill-fated court compromise, failed to achieve any enduring results.

A vital question confronting the President involves the future of the Democratic party. Controlling its machinery, he must determine its immediate destinies. It can be turned to the right or left. It can be led on fruitless crusades, or made the guardian of the status quo. Possibly even Mr. Roosevelt would like to know where he will take it.

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[82] *Ibid.*, p. 12283. [83] *Ibid.*, pp. 9555 and 9566.
[84] *New York Times*, March 5, 1937. [85] *Ibid.*, June 25, 26, 27, 1937.

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Government Corporations and Federal Funds.* The increasing use of the government corporation in the conduct of governmental business enterprises is one of the most significant of recent trends in public administration. Indeed, the corporate device represents one answer to the charge that government is so poorly organized and so beset by red tape that public operation of economic enterprise is inevitably sluggish and inefficient. Most notably during the mobilization crisis of 1917 and the depression years following 1929, when speedy and vigorous action was needed, the federal government has relied heavily upon government corporations which could cut through red tape and "get things done."[1] Also in more normal times, however, particular enterprises somewhat isolated from regular governmental activities have been carried on in corporate form.[2]

The use of federal funds by these corporate agencies raises the serious problem of reconciling managerial freedom and efficiency with adequate controls, responsibility, and accountability. Without exception, the government corporations have enjoyed a measure of freedom in financial matters which differentiates them from the regular departments and establishments in the federal administrative branch. Even Federal Prison Industries, Inc., which must observe all governmental laws and regulations in matters of expenditure, and which is subject to complete audit control of the General Accounting Office, nevertheless enjoys a permanent appropriation, and consequently is freed from the necessity of annual appearances before Congress in order to secure funds. At the other extreme, such agencies as the Inland Waterways Corporation have the perennial use of their capital, freedom in expenditures from regular governmental procedures, unrestricted power to retain and utilize earnings, and complete freedom from the jurisdiction of governmental accounting and auditing officers. In between these extremes, the majority of corporations enjoy varying degrees of freedom—a freedom in some cases rather

* This subject is treated more fully in the author's forthcoming monograph on government corporations.

[1] For a full account of United States experience with the wartime corporations, see H. A. Van Dorn, *Government-Owned Corporations* (1926). A list of the more important "recovery" corporations would include: Reconstruction Finance Corporation, Tennessee Valley Authority, Home Owners' Loan Corporation, Federal Deposit Insurance Corporation, Federal Savings and Loan Insurance Corporation, Commodity Credit Corporation, Electric Home and Farm Authority, Export-Import Banks, Federal Subsistence Homesteads Corporation, Federal Surplus Commodities Corporation, R.F.C. Mortgage Company, Federal Farm Mortgage Corporation, Tennessee Valley Associated Coöperatives, Federal Prison Industries, Inc., and the banks for coöperatives and production credit corporations within the Farm Credit Administration structure.

[2] For example, the Panama Railroad Company, the federal land banks, the federal intermediate credit banks, and the Inland Waterways Corporation.

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clearly outlined in the statutes, in others the subject of differing interpretations and even dispute.[3] For example, the Commodity Credit Corporation is expressly authorized to utilize its earnings in operation;[4] the Electric Home and Farm Authority has asserted and acted upon a similar power, in the absence of statutory provisions and in opposition to the contention of the Comptroller-General.[5]

The primary reason for extending to government corporations a large measure of financial freedom has to do with the nature of the activity which is undertaken. With but few exceptions, the corporate device has been utilized in the conduct of business undertakings of a character ordinarily associated with private enterprise, rather than in the administration of functions more clearly "governmental." Thus, the majority of federal corporations have been directly engaged in banking and credit activities; others have operated transportation services in particular localities; still others have engaged in such business undertakings as the purchase and distribution of foodstuffs, the production and sale of hydroelectric power, and the construction and maintenance of housing facilities. These functions are of a dynamic nature which demands different treatment from that afforded routine governmental activities. Hence, it has been realized that regardless of the value of general restrictions and regulations for controlling the financial transactions of the relatively stable old-line departments, the successful entry of the government into commercial and competitive fields demands flexibility and an absence of red-tape in administration. This flexibility might have been achieved in several ways. There is undoubtedly much truth in the following statement of Mr. Louis B. Wehle: "To a great extent, the phenomenal growth of the government-controlled business corporation in America could have been avoided, if an early distinction could have been made between the static regulatory function and the dynamic business function, and if there could have been lent to the performance of the business function

[3] The T.V.A. and the Merchant Fleet Corporation particularly have become involved in serious disagreement with the Comptroller-General over the proper interpretation of statutory provisions relating to the manner of expenditures, the utilization of earnings, and the nature of the audit required. However, the financial powers of corporations created by executive officers under general statutory authorization to create necessary "agencies" are even more uncertain. Comptroller-General McCarl in effect destroyed the Public Works Emergency Housing Corporation by refusing to sign a warrant transferring funds to that agency. (Decision of January 11, 1934.)

[4] 49 Stat. 4.

[5] Mr. McCarl's contention that the E.H.F.A. earnings must be covered into the Treasury and withdrawn only on accountable warrants is contained in an unpublished letter of December 14, 1935. A similar dispute with the Export-Import Banks was settled when Congress expressly sanctioned the position taken by corporation officials (49 Stat. 4).

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by departmental officers a reasonable freedom from abstractly sound, yet antiquated, restrictions upon their procedure."[6]

However, the answer of Congress to the need for flexibility in commercial enterprises has been the government corporation. The case of the Federal Barge Lines is an excellent illustration. From 1920 until 1924, this war-time heritage was operated under the Inland and Coastwise Waterways Service, an agency dependent upon annual congressional appropriations and subject to the regular governmental purchasing and auditing procedures. The results were discouraging, and particularly did the helplessness of the Service in the face of emergencies requiring immediate but unforeseen expenditures prompt officials to make an urgent request that Congress remedy the situation.[7] As a consequence, the Inland Waterways Corporation was created in 1924 as an agency which could effectively test the economics of water transportation by operating the Federal Barge Lines in competition with the railroads and other carriers. Conducted along the lines of a private business, with ample funds and freedom from governmental restrictions, the I. W. C. has been very successful in contrast to its predecessor.[8] Business enterprises, whether private or public, in order to be successful, must be able to meet emergencies promptly, make economical purchases, undertake needed improvements, and dispense with overly-legalistic and expensive forms and procedures. The fact that government corporations have been utilized primarily in the conduct of such enterprises is thus a major element in any explanation of the freedom which they enjoy.

Another significant factor has been the need for speed in carrying on a temporary or emergency program. The urgency of the situation was frequently pointed to as justifying the large powers and the flexibility granted the war-time corporations, and action and accomplishment took precedence over cautious restrictions and controls. Unquestionably, the temporary nature of the corporations created was a factor in securing the acquiescence of many who would have viewed any such grants of freedom on a permanent basis as fraught with danger.[9] Perhaps to a slightly lesser

[6] Louis B. Wehle, "Government-Controlled Business Corporations in America and Europe," 10 *Tulane Law Review* (1935), p. 94.

[7] See the convincing testimony of General [then Colonel] Ashburn, before the House Committee on Interstate and Foreign Commerce, Hearings on H. R. 6647, 68th Cong., 1st sess., 1924.

[8] See M. E. Dimock, *Developing America's Waterways* (1935). Eloquent tribute to the relative success of the I.W.C. is the admission of an avowed opponent of government operation that a "new formula" has been found by which government can be successful in business. See Herbert Corey, "Uncle Sam Finds a Formula for Competing with the Carriers," *Public Utilities Fortnightly*, Vol. VIII, No. 7 (1931), p. 389.

[9] For example, consider the following statement of Paul M. Warburg, vice-governor of the Federal Reserve Board, with respect to the proposed War Finance

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degree, the economic emergency of the past six years has influenced Congress and the President in defining the powers of the New Deal corporations. Illustrative is the H.O.L.C., which was organized to give prompt relief to distressed home-owners on as large a scale as possible. As Congressman Boylan said in the House when opposing restrictive provisions: "The gentleman knows this is emergency legislation. The gentleman knows also that were we to wait for civil service examinations, and what not, perhaps the exigency necessitating this legislation will have passed.[10] Another example is the Reconstruction Finance Corporation, which was designed as a temporary agency and empowered to give immediate relief to financing institutions caught in the depth of the depression. Speed was an important factor, and in establishing an agency which could extend relief with as little delay as possible, Congress drew upon the emergency War Finance Corporation as a model. War-time and depression experience thus indicates that government corporations created for emergency purposes have been granted extraordinary powers largely because of the urgent need for quick and untrammelled action.

There have always been those who oppose the grant of any extraordinary financial powers to governmental agencies operating in corporate form. Various reasons are brought forth, but in general the argument progresses along somewhat the following lines: public money is expended and received, and Congress has the duty of exercising control thereover; general restrictions and procedures have been developed to insure honest administration, and they should be applicable to government corporations as well as to non-corporate agencies; there is no sound reason why corporations should not be subject to the jurisdiction of Congress' central "watch-dog," the General Accounting Office; and finally, there is great danger that "freedom in financial transactions" will grow into waste, extravagance, and irresponsibility.[11]

There can be no disputing the fact that government corporations must

Corporation: "I would like to make it as emphatic as I can that I think this is only an emergency institution for this war, and that it would be a very unfortunate thing if an institution of this kind were to be permitted to exist after the conclusion of peace, and that is one of the reasons why I think these powers are better lodged in the corporation than in the government, because the corporation automatically ceases to have power to operate, yet upon the conclusion of peace the government could go on." (Hearings before House Committee on Ways and Means, February, 1918, pp. 41–42.)

[10] 77 *Congressional Record*, p. 2569.

[11] See James M. Beck, *Our Wonderland of Bureaucracy* (1932), p. 128; O. R. McGuire, "Government by Corporations," 14 *Va. Law Rev.* (1928), 186; cf. views of the late Mr. Buchanan, 79 *Cong. Rec.*, p. 3261, and the late Senator Schall, *ibid.*, pp. 1546 *ff.* Comptroller-General McCarl always deplored the fact that many government corporations were "not subject to the statutory restrictions or safeguards which experience has taught are necessary in the expenditures of public funds," and repeatedly recommended "remedial" legislation by Congress.

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be held adequately responsible for their stewardship of public funds. Under our form of government, this means that they must be held responsible to Congress, either directly or indirectly, since that body is the guardian of the public treasury. In the broadest sense, congressional control is maintained through the statutory definition of the major purposes to be served by a particular corporation. Such provisions vary widely in nature and in the length of detail, but every corporation is provided with these major statutory guiding lines, and all financial operations must be governed accordingly. This is true not only of the corporations expressly created by federal statute, but also of those organized under executive order. The case of the Public Works Emergency Housing Corporation is illustrative, since the Comptroller-General and the Attorney-General concurred in ruling that the corporate powers of that agency could not legitimately exceed those necessary to carry out the public-works program as outlined by Congress in the National Industrial Recovery Act.[12]

Congressional determination of the major purposes and policies of government corporations is indisputably desirable. Within this larger framework, however, there are several alternative degrees of control. On the one hand, such detailed regulations and restrictions may be imposed in the statutes that administration is hampered and the advantages of the corporate device nullified. At the other extreme, a corporation may within its vague statutory guides enjoy complete freedom in financial transactions, and may be free from any periodic check-up by Congress or its agents, thus dangerously approaching irresponsibility. Finally, there is a large middle ground where administrative freedom may be so guided through adequate controls as best to serve the public interest. It is this latter field which needs to be outlined. Because of the great variation in organization, purposes, and activities which characterizes our federal corporations, generalization is hazardous, but in any event, the attempt to pick out some guiding considerations seems worth the effort.[13]

With regard to the supplying of capital, Congress has freed most of its corporate agencies from the necessity of annual appropriations by sub-

[12] The Comptroller-General's decision was rendered on January 11, 1934—that of the Attorney-General on February 7, 1934. Both are interesting commentaries on the creation of government corporations by executive officers.

[13] Mr. Oliver P. Field's suggestion that Congress enact a general statute under which all federal corporations could be created calls attention to the unsatisfactory and haphazard legislative treatment of such agencies. However, one is inclined to wonder whether a statute drawn in the detail recommended by Mr. Field would not impose upon all corporations a dangerously rigid uniformity. Certainly, at the present time Congress could advance far in the development of guiding principles without danger of rigidity. See O. P. Field, "Government Corporations: A Proposal," 48 *Harvard Law Review* (March, 1935), p. 775.

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scribing to an amount of capital stock varying according to the nature of the enterprise concerned. Where Congress has determined as a matter of policy the desirability of undertaking a particular business activity, and desires maximum efficiency and continuity of administrative policy in the conduct of that business, the practice of subscribing to capital stock is quite satisfactory. It leaves with Congress the determination of the amount which the government should invest in the activity, and yet has the following advantages over a system of annual appropriations: the danger of a half-completed program, curtailed by lack of funds, is minimized; the removal of uncertainty surrounding the annual supply of funds is conducive to continuity of policy and administrative efficiency; the danger of congressional interference in the details of administration, as through restrictive riders on appropriation bills, is done away with; and finally, the corporation's operations are not paralyzed for several weeks each year while laborious and detailed preparation is made for the annual appearance before congressional appropriations committees. A system of stock subscription, however, should by no means be made the cloak for uncontrolled expansion and entry into new fields of activity. The utilization of capital within the broad limitations and purposes of the incorporating statute should prevent such abuses, and capital outlays in new though related fields should require express congressional authorization. Illustrative are the periodic expansion of R. F. C. lending powers through congressional action,[14] and the extension of I. W. C. activities to additional river systems.[15] It is where a field of business activity can be fairly well delineated and congressional policy with respect thereto well-defined, that the corporate device, with its permanent capitalization, reaches its greatest serviceability as an administrative vehicle.

In addition to initial capitalization, many of the federal corporations have secured supplementary funds through their borrowing power.[16] This is particularly true of the banking and credit corporations.[17] It has been the practice of Congress to place a maximum limitation upon the borrowings of the several corporations, and this seems to be a desirable yet not too restrictive measure of control. For the most part, borrowings must be made on the corporation's own credit and security, and thus there is a

[14] See *Reconstruction Finance Corporation Act, With Amendments*, currently compiled in R.F.C. offices, *passim*. [15] See Pub. No. 389, 74th Cong.

[16] As an illustration, the United States Grain Corporation, in financing the purchase of the 1918 wheat crop, was able to borrow $385,390,000 upon its own credit. See Frank M. Surface, *The Grain Trade During the World War* (1928), p. 444.

[17] The occasional magnitude of these borrowings may be seen in the fact that through 1934 H.O.L.C. bonds totalling $2,416,980,025 had been issued. *Second Annual Report of the Federal Home Loan Bank Board*, 1934, p. 87. As of September 30, 1935, notes of the R.F.C. totalling $4,072,574,166.67 were outstanding. *Quarterly Report of R.F.C.*, September, 1935.

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tangible advantage in sound condition and good management. Occasionally, however, the guaranty of corporation bonds has been resorted to by the government in order to secure needed funds on the most favorable terms.[18] The sacrifice of self-reliance has been justified on the grounds of the urgency of the program concerned and the immediate need of funds. In the case of activities primarily of an emergency and relief nature, such as the work of the R.F.C. and the H.O.L.C., the justification seems sufficient, whereas in other more permanent corporate undertakings the government guaranty of borrowings is not desirable. Where large bond issues are concerned, and particularly where government guaranty is provided, Congress has often required the approval of the Secretary of the Treasury in corporation borrowings. This is done in order to secure harmony with the borrowing activities of the government itself, and such an arrangement provides a reasonable and desirable measure of control.

Experience indicates that the majority of business enterprises carried on by government corporations cannot be subjected to the general restrictions and regulations which usually surround the expenditure of public funds without seriously endangering efficiency and economy. This fact has been appreciated by Congress, and most of the corporations have been exempted in practice, although it is only in recent years that express statutory authorization has been given government corporations to "determine the manner" in which their expenses shall be incurred, allowed, and paid.[19] In the conduct of a complex banking business, it is inevitable that immediate action without compliance with governmental red-tape will continually be required. Let us take an illustration from the experience of the Export-Import Bank. An American manufacturer selling goods abroad wishes to know, before submitting his bid, the terms on which the bank will finance him. A protracted delay means loss of the business. Unless the Bank can make an immediate commitment, without submitting it to the Comptroller-General for approval, such applicants cannot be given financial assistance. A huge construction program like that of the T.V.A. can be most efficiently carried on if purchases and contracts are made intelligently, without blind adherence to rigid rules regarding acceptance of the lowest bid, the drawing of lots in cases of identical bids, etc.; the engineering judgment so valuable to private construction undertakings is just as valuable when government takes upon itself similar activities.[20] Purchasing operations like those of the

[18] Notably in the case of the R.F.C., the H.O.L.C., the Farm Mortgage Corporation, and the T.V.A.

[19] R.F.C. (47 Stat. 6), Federal Deposit Insurance Corporation (48 Stat. 94), Farm Mortgage Corporation (48 Stat. 172), H.O.L.C. (48 Stat. 132), Federal Savings and Loan Insurance Corporation (49 Stat. 298).

[20] For a thorough exploration of this question, see Chairman Morgan's testi-

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Panama Railroad Company's commissary division can be successful only if discretion and ingenuity may be exercised.[21] Advertising for bids is quite satisfactory as the normal procedure in purchasing matters, but when as a strict requirement it prevents taking advantage of favorable market prices in particular instances, the net result is an added expense that should not be inflicted upon a business enterprise.

The importance of the purchasing problem is much greater for some of our federal corporations than it is for others. In the case of the banking and credit agencies, the purchase of office supplies and equipment is such a small part of total financial operations as to be relatively insignificant. Such purchases can be standardized and conducted under regular governmental rules without serious handicap to administrative efficiency. Purchase of standard supplies from the regular government contractors may indeed be economical, while at the same time preventing possible abuses under a more flexible arrangement. On the other hand, where government corporations are concerned with the construction, maintenance, and operation of huge physical plants or the securing of products and materials for resale in a competitive market, the purchasing problem is of vital importance to the success of the enterprise, and purchases must be made with a freedom conducive to the greatest efficiency and economy.[22] The Panama Railroad Company, the Inland Waterways Corporation, and the Tennessee Valley Authority are the best present-day examples of this type of corporation. During the fiscal year 1935, commitments of the T.V.A. for purchase of construction and plant equipment, furniture and fixtures, materials, services, and supplies approximated $25,673,378.90.[23]

The overhead cost of settling small claims against a business undertaking in the regular governmental manner—that is, through adjustment and settlement in the General Accounting Office—often would extend to

mony before the House Military Affairs Committee, *Hearings on "Tennessee Valley Authority,"* 74th Cong., 1st Sess., May, 1935, pp. 557 ff.

[21] This division annually purchases over $5,000,000 worth of merchandise for resale to the government, the Canal, and individuals and companies within the Canal Zone. In purchasing articles for resale, the Panama Railroad Company must consider their attractiveness to its customers, and must satisfy the whims and desires of such prospective purchasers rather than the bare requirements of a specification.

[22] After years of experience in the management of one of England's public enterprises, Mr. Frank Pick made the following statement:

"Private enterprise may buy whatever it pleases and on whatever terms it pleases. A public utility undertaking, being open to challenge on preferences, on favouritism, on even baser grounds, protects itself by going to tender and accepting the lowest tender, other things being equal. *Yet this is maybe the least efficient way of buying.*" (*Public Admin.*, Vol. XIII, p. 135). Italics mine.

[23] *Annual Report of the Tennessee Valley Authority*, 1935, p. 51.

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many times over the amount of the claim involved. Much more economical is the practice of the T.V.A. with respect to claims arising in connection with its reservoir clearance activities. Minor damages to cultivated ground are paid for on the spot, and the delays and expense involved in adjudication by the General Accounting Office are avoided. Other corporations, such as the farm credit banks and the Commodity Credit Corporation, write off small errors where payment or collection would involve unreasonable expense. A centralized and overly-formalized procedure in such matters is an unnecessary handicap to business success.

Occasionally, as in the case of Federal Prison Industries, Inc., with its relatively small expenditures, the application of regular statutes and rules does not work a hardship. This is exceptional, however, and it is interesting to note that even Comptroller-General McCarl, the chief advocate of strict regulation in expenditures, conceded now and again that the business operations of certain government corporations cannot be carried on successfully under regular procedures.[24] Mr. McCarl's plea that exemption, if intended by Congress, be expressly given, is a reasonable one, and explicit provisions in the R.F.C., H.O.L.C., and Federal Savings and Loan Insurance Corporation Acts are a marked improvement over earlier exemptions which, though apparently intended, were only implied.

One outstanding characteristic of most government corporations has been the sale of goods or services from which the receipts and earnings have comprised an essential part of the expendable funds. In contrast to receipts of the regular departments and establishments, corporation earnings have with few exceptions been available for operating expenses, capital improvements, and the building up of reserves and surpluses. The immediate deposit of earnings in the federal treasury as miscellaneous receipts has seldom been required. Sometimes the retention of earnings is expressly authorized in the statutes; sometimes the excess over operating expenses is committed to a particular use such as the building up of reserves; frequently, the right to retain and utilize earnings has been asserted as an implied corporate power.

There are several advantages, as Congress has recognized, in the availability of earnings for further use in the particular enterprise from which they arise. In the first place, such a system goes a long way toward making a successful corporation self-sufficient and beyond the need for further appropriations; the large majority of federal corporations meet their operating expenses from their own proceeds. Secondly, the in-

[24] See, for example, *Annual Report of the Comptroller-General*, 1932, p. 15. While making this concession in theory, the Comptroller-General continued to disallow expenditures which a reasonable application of the theory would seem to justify. See *infra*, note 36.

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centive to keep operating expenses well within earnings and still show a surplus is a valuable aid to efficient operation. Corporation officials, whether in private or public fields, undoubtedly take pride in a commendable financial record, and strive to maintain and better previous standards. The Panama Railroad Company, with its enviable record, is a case in point.[25] In the third place, serious capital impairments may be prevented, and needed replacements and improvements may be made. For the banking and credit agencies, it is essential to maintain unimpaired capital and to build up reserves and surpluses with which to meet unexpected losses from loan transactions. If earnings may be retained for these purposes, the business position of the corporations is greatly strengthened. In the case of the F.C.A. corporations, earnings above operating expenses are required by law to be applied to the restoration of impairment, if any, of capital and paid-in surplus.[26] On the other hand, the Panama Railroad Company, the Inland Waterways Corporation, the Tennessee Valley Authority, and other such corporate enterprises which involve the maintenance and operation of large physical plants have a problem not shared by the banking agencies—namely, that of making needed replacements and improvements in physical plant and equipment. Reserves for depreciation must be accumulated, and such factors as increased business, technological advances, and competition will from time to time demand outlays for new property and equipment if the enterprise is to be progressively conducted. The Panama Railroad Company, for example, has been able to increase its capital assets from approximately $11,000,000 in 1904 to $34,600,660.12 in 1935 through the employment of part of the company's earnings for the purchase of rolling stock and equipment and the improvement of property.[27] Congressional sanction of the use of earnings for such purposes is very desirable. Finally, the use of earnings normally insures the availability of operating capital for meeting emergencies and unforeseen contingencies without expensive delays. One of the greatest blows to the Inland and Coastwise Waterways Service resulted from its inability to meet a serious emergency caused by an unprecedented drop in the river level in 1922. Much business was lost as a result of the fear of shippers that the service would be discontinued.[28] Such an eventuality would have been impossible if the Inland Waterways Corporation, with its power to retain earnings and build up reserves, had been in existence.

Empowering government corporations to retain and utilize earnings does not mean that the government is deprived of any ultimate profits

[25] See M. E. Dimock, *Government Operated Enterprises in the Panama Canal Zone* (1934). [26] See, for example, 48 Stat. 259, 263.

[27] *Annual Report of the Panama Railroad Company, 1935*, p. 6.

[28] See Van Dorn, *op. cit.*, p. 220.

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which may accrue. Thus, temporary agencies such as the war-time corporations or the R.F.C. have been acquired to turn over all assets upon liquidation, and rightly so. In the case of the more permanent corporations, provision may well be made for the return of any excess profits to the federal treasury—witness the annual dividends of the Panama Railroad Company.[29] However, profits such as those made by the P.R.C. are exceptional, and in operations such as the extension of credit, in which the policy of the government is to keep interest rates as low as possible while covering expenses, the question will not arise.

The problem which has been least satisfactorily settled in so far as our government corporations are concerned is that of providing suitable methods of accounting and auditing control. Some corporations are entirely free from any form of governmental audit, and the only periodic check-up of their financial transactions is that made in the annual audit conducted by private accountants. Others are subjected to all of the regular governmental procedures, and must submit complete accounts and supporting papers for a continuous audit by the General Accounting Office. The majority, however, have been on a middle ground which is often poorly defined, with the result that auditing matters become the subject of debates and frequently bitter disputes with the governmental accounting officers. Neither of the two extremes seems to secure the proper responsibility in the use of public funds together with the flexibility needed for efficient administration. However, while the ideal solution lies somewhere in between, it should be possible to define the procedure in such a way as to eliminate much of the uncertainty and bickering which have so frequently appeared in the past.

The subjection of all government corporations to the "auditing" control of the General Accounting Office as that agency is now constituted would be a serious mistake. The President's Committee on Administrative Management has quite rightly pointed out that the Comptroller-General's present function of allowing or disallowing current expenditures by governmental agencies results in inefficient administration, and is properly a function which should be lodged in the Treasury, i.e., within the administration itself.[30] In the conduct of a business enterprise, where flexible management is essential, detailed and legalistic expenditure control by an outside agency is *a fortiori* unsatisfactory. The advantages of the corporate device will best be preserved by retaining the comptrolling function within the corporation itself.

The question of auditing is quite different. The exercise of external

[29] The annual dividend to the government is 10 per cent, and the total paid into the treasury since 1904 is over $12,000,000.

[30] *Report of the President's Committee on Administrative Management* (January, 1937), pp. 20 ff.

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control through some system of periodic examination and post-audit of the accounts of government corporations should properly be in the hands of an independent governmental auditing agency. Neither the legalistic and formalistic emphasis of the General Accounting Office nor the employee-accuracy-and-honesty emphasis of the private auditing firm meets the need. Much good might be accomplished if the audit could be more than a financial or fidelity audit, if it could be a service or efficiency audit, by an agency having the power thoroughly to investigate operations and to make recommendations to Congress as to efficiency as well as honesty in administration. The work of the farm credit examiners, as they tend more and more toward efficiency audits, is a case in point; and T.V.A. Chairman Morgan's suggestion that the Comptroller-General furnish competent engineers at the Authority's expense to go over T.V.A. work, "to keep track of it, in any field that he wants to explore, to see whether it has a good honest tone to it, to see whether anything ought to be looked into further,"[31] is somewhat along the same lines.

The best solution to the problem of providing our federal corporations with an external audit is contingent upon a redefinition of the functions of the General Accounting Office along the lines recommended by the President's Committee.[32] Once this office became a real post-auditing agency, a particular division should have the specialized duty of auditing, thoroughly investigating, and making reports upon the financial operations of governmental business corporations. The personnel of such a division would have opportunity to become thoroughly familiar with, and hence more sympathetic toward, the aims and activities of the various corporations. The difference in nature between business enterprise and routine governmental activity should be clearly taken into account, and the audit governed accordingly.[33] Comparisons and constructive suggestions could be made, yet no interference in administration would be possible.

Short of this desirable change in the status of the General Accounting Office, other solutions must be found. Congress should, in the first place, clarify the relationship between corporations and the Comptroller-General. There should be no occasion for disputes such as that which has arisen in the case of the Tennessee Valley Authority over the "audit" required by statute. In such instances, it should be made clear whether Congress intends a complete submission of accounts and schedules, as Mr. McCarl maintained, or a post-audit in the corporation offices, as

[31] *Hearings before House Military Affairs Committee*, May, 1935, p. 574.

[32] *Report* (January, 1937), p. 23.

[33] For the differences between private or business auditing and the ordinary governmental audit, see D. H. Smith, *The General Accounting Office*, Service Monograph, Institute for Government Research (1927), p. 111.

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contended by T.V.A. officials. If the Comptroller-General is to be given the power of auditing the accounts of government corporations, the least that can be done is to define clearly the nature of that audit.[34] A provision such as that in the amended T.V.A. act[35] to the effect that the corporation shall have opportunity to examine and answer the exceptions contained in such an audit before the report is made to Congress may well be included.

Where a number of related corporations are grouped together under an overhead organization such as the Farm Credit Administration, a satisfactory independent audit of individual corporation transactions can be made by the central agency. Such an arrangement makes unnecessary the regular controls usually applied to transactions of governmental agencies, and hence the subsidiary corporations should be entirely free from any direct control or audit by the General Accounting Office. The experience of the F.C.A. seems to offer encouragement to the further extension of the scheme. The central agency is sufficiently distinct from the subsidiary corporations to insure an independent examination of individual corporation transactions; and yet through familiarity and sympathy with the major objectives of the group as a whole it may lend to its examinations a reasonableness and sense of perspective which is greatly to be desired. Opportunity for improvement through comparison of the individual corporations is afforded, and an audit becomes a preliminary step to better and more efficient methods as well as a check on honesty in administration. Control of financial transactions may be made effective without imposing an administrative strait-jacket upon the operating units.

A final possibility is to free individual corporations from any control or audit by the General Accounting Office, as has been done in the case of the Panama Railroad Company, the Inland Waterways Corporation, and the Reconstruction Finance Corporation. Where the decision lies between this type of freedom, on the one hand, and complete General

[34] In the case of the Fleet Corporation, the fact that the statutory mandate was for the Comptroller-General to make an audit "in accordance with the usual methods of steamship or corporation accounting" apparently had little effect, and the corporation officials rightly complained that Mr. McCarl's audit was conducted along regular governmental lines, and with his usual approach. For example, exception was taken to such transactions as the following: compromise settlement of claims against the corporation when it had not been proved that "the action could be sustained at law"; expenditures for insurance on property in spite of the "long established policy of the Government not to carry insurance"; purchases of automobiles for use of corporation officials; and payment of premiums on fidelity bonds required of corporation employees. These practices, all quite common and legitimate for a private corporation, were nevertheless condemned by Mr. McCarl as being illegal for a governmental agency. See House Doc. 111, 71st. Cong., and House Doc. 217, 72d Cong. [35] 49 Stat. 1081.

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Accounting Office control as ordinarily exercised on the other, there are strong arguments in favor of the former. Where this choice is made, however, statutory provision should be made for periodic audits by reputable private firms as well as for financial reports by the corporations themselves. The Inland Waterways Corporation Act, which makes no mention of any audit or report whatsoever, goes to an unsatisfactory extreme.[36] In providing for the periodic audit, Congress might well place the selection of the private firm in the hands of some executive official or agency which is not directly responsible for the management of corporation activities.

The government corporation is primarily an administrative device, and is so designed. It reaches maximum administrative efficiency when granted a large measure of freedom in management and in financial matters. If it is used for partisan purposes or is otherwise mismanaged, its very virtues become vices. Desirable financial freedom becomes the shield of favoritism and corruption. Fortunately, the experience of the federal government with its corporate agencies is reassuring on this point. Corporation officials must and can be chosen for their ability and integrity without any reference to partisan or political considerations. The entire divorce of the Tennessee Valley Authority from spoils practices is only one of the encouraging signs in recent corporate developments. In the last analysis, the selection of public spirited and expert men to direct the operations of our government corporations is the real safeguard of the public interest, and when this is accomplished, the freedom conducive to progressive administration can profitably be granted.

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Federal Administration of Rural Electrification. *Origin.* The Rural Electrification Administration began as one of the "temporary" and "emergency" units in Roosevelt's collection of alphabetical agencies under executive order 7037 of May 11, 1935. The expressed purpose of the President was to promote the generation, transmission, and distribution of electricity in rural areas. Morris L. Cooke, noted management engineer who had served as a member of the Power Authority of New York when Roosevelt was governor, was chosen administrator. Money for loans to coöperatives, public bodies, and private companies was made available from relief funds, with the stipulation that borrowers must use at least 90 per cent relief labor in construction work. All money was to be repaid; no part of the federal funds was to be used for grants or subsidies.

[36] 43 Stat. 360. It should be noted that in practice the I.W.C. makes annual reports to the Secretary of War and has its accounts audited once each year by certified public accountants.

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Advocates of rural electrification favored greater permanence for R.E.A. than could be given under the Emergency Relief Act of 1935, which authorized the executive order mentioned above. Senator Norris and Representative Rayburn introduced bills which resulted in the Norris-Rayburn Act of May 20, 1936, establishing the R.E.A. on a ten-year basis. Lending procedures were laid down in some detail, but organization and employment policies were among the many matters over which the administrator was granted broad discretionary authority. When Mr. Cooke took office in 1935, he was faced with three problems: (1) assembling and organizing a staff, (2) determining loan policies, and (3) making loans.

1. *Assembling and Organizing a Staff.* The executive order of May 11, 1935, set no restraints as to the number, salaries, or qualifications of employees, who could be chosen on any basis agreeable to the administrator. The claim is made for the organization that it has not expanded rapidly, and that merit has been the guiding principle in selecting employees. Whether this defense is strictly valid or not, the records of the Civil Service Commission indicate that the present staff cannot keep up with its work, as shown by the many hours of unpaid overtime recorded each month. When the Norris-Rayburn bill was under discussion in Congress, there was some debate on the method to be used in choosing employees, but nothing mandatory was inserted in the act. There was, instead, an innocuous statement to the effect that appointments and promotions should be made on the basis of efficiency, with a warning to the administrator that partisanship would be considered cause for his removal. The President issued an executive order (7458), September 26, 1936, bringing R.E.A. into the classified service, but allowing persons previously appointed to acquire civil service status by means of non-competitive tests. Lawyers, engineers, and "experts" were exempt from the operation of the order, and at present these comprise about 50 per cent of the staff. At first the staff was small and simply organized, but as the volume of work increased new divisions and sections were added. On December 31, 1935, personnel numbered 222, a year later it was 407, and on February 28, 1937, the total was 416. At the last-mentioned date, the organization comprised five divisions (engineering, legal, management and finance, utilization and research, projects development), responsible to the administrator and his deputy; these five divisions were further divided into 20 sections. Although lawyers and engineers are frequently sent out from Washington to give advice and assistance to groups which desire R.E.A. loans, there are no field offices or field employees.

2. *Determining Loan Policies.* The act of 1936 allows 25 years as a maximum term for construction loans, and stipulates further that the interest on any loan shall be the same as the average paid by the govern-

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ment on its long term bonds during the "last preceding fiscal year in which any such obligations were issued." The R.E.A. was faced with laws, commission rulings, and court decisions varying from state to state. As an administrative problem, loan policy-making involved the setting up of forms and procedures which would be substantially uniform, would protect the government's equity, and yet would fit in with state laws and adjudications. R.E.A. has no coercive power over private utilities or state regulatory boards; it cannot fix wholesale or retail rates for power; nor can it set aside territory for exclusive R.E.A. line construction. The only means it has of insuring that loans are safely made, and that borrowers are protected from the encroachment of private utilities upon their choicest territory, is through its authority to fix the terms of loans. No money is actually advanced until R.E.A. is assured of (a) a self-liquidating project, (b) coöperation, or at least non-interference, of the state regulatory commission, (c) exclusive rights for the borrower over the territory claimed, and (d) a source of wholesale power at reasonable rates. The determination of these points necessitates a careful study of all the legal and engineering factors of each individual request for a loan. While it has been found that certain legal and economic problems recur frequently, and can be met with uniform procedures, the immensity of the territory covered, plus a wide range of local variables, makes constant research a necessity. Loan policies, therefore, are not rigidly fixed.

3. *Making Loans.* An effective educational and publicity campaign has been carried on from Washington in order to reach all rural groups in need of electricity. The division of utilization and research is divided into five sections: utilization, research and statistics, reporting, information, and exhibits. Attractive illustrated leaflets have been issued depicting the opportunities and needs in the field of rural electrification, and comparing the United States with other countries to our discredit. Frequently, reprinted pictorial statistics show the United States at the bottom of the list in extending the benefits of electricity to farms, but it seems evident that the figures on which they are based are incomplete, estimated, or at best non-comparable. Other leaflets outline procedural requirements for the benefit of prospective borrowers, and an attractive handbook, *Electricity on the Farm*, may be purchased from the Superintendent of Public Documents. From time to time, a project development map is issued; it gives a somewhat exaggerated picture of the situation because of the way in which projects are depicted. For bringing "current" developments before the rural population, use has been made also of mimeographed press releases, pictorial, graphic, and electrified exhibits, radio talks, and the interesting R.E.A. magazine, *Rural Electrification News*. These various media for catching the attention of the rural dweller have doubtless proved effective in stimulating requests for loans.

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After several months spent in collecting a staff, setting up an organization, studying legal and economic problems, outlining procedure, and educating the public to the possibilities offered by the government, R.E.A. made its first allotments on August 22, 1935. Construction work was not well under way, however, until the following spring.

Large numbers of applications are constantly being received, investigated, and given preliminary allotments if the projects are deemed practicable and have reputable backers. The next step is to negotiate loan contracts satisfactory to both parties and complying with state laws. The amount of the loan is paid to the borrower in installments, the final payment usually following completion of all construction.

Rural electrification has made rapid progress in the United States since 1935, due in part to the loans of R.E.A. and in part to the haste with which private companies have extended their lines to prevent government financed coöperatives from entering the field. Tables in the *First Annual Report of R.E.A.* (January 20, 1937) show that from its inception (May 11, 1935) to the end of 1936 R.E.A. allocated $43,737,779 for 218 construction loans, with 28 of these projects partly or wholly energized. The report bears evidence of being prepared hastily to fulfill the statutory requirement of annual reporting, for its seven mimeographed pages of text and a considerable number of pages of tables contain little to enlighten. There is a record of loans and allotments, together with copies of the executive orders and the act of 1936, but no explanation of procedure, organization, personnel, administrative costs, or other pertinent data. There is not a picture or a graph; certainly, no charge of lavish expenditure for propaganda can be levied against this report—indeed, its very drabness repels critical attention.

Rural electrification with federal funds is too new a venture, too little investigated, and too sketchily reported to enable conclusive or valid opinions as to its worth or future to be formed. One may quite safely venture the guess that so long as there are vast unelectrified rural areas in the country some form of governmental aid will be perpetuated—rural congressmen will see to that. If a Department of Conservation is established, R.E.A. might become one of its bureaus. Mr. Cooke is thought to favor a transfer of this nature, and he is being mentioned as the presidential choice for first Secretary of Conservation. On February 15, 1937, he resigned as administrator of R.E.A., and went on a vacation of indeterminate length.

Significant Aspects of R.E.A. as an Administrative Unit. It may be doubted whether political scientists are alarmed at centralization unless it leaves the public unguarded and helpless before tyrannical rulers; in fact, they have frequently indicated their belief in the beneficial as well as the "inevitable" character of centralization; it may be the only way

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of keeping governmental machinery operating in a highly complex industrial society. Beard and many others have pointed out that centralization has for years been taking power away from our local governments in favor of the states, from the states in favor of the federal government, and from legislatures in general in favor of chief executives. Nor is the incursion of government into business a new development. The current economic crisis may have served to speed up these processes; of itself, it did not give birth to them.

R.E.A. is so small that it is relatively unimportant as an administrative unit. It displays, however, many of the characteristics of "centralization" and "government in business" which in their local and their world-wide manifestations please some and alarm others.

(1) The R.E.A. increases executive power. Like many another New Deal creation, R.E.A. was set up as a temporary, emergency agency. The executive order authorized by the broad grant of powers given Roosevelt in the Emergency Relief Act of 1935 was not subject to scrutiny in committee or on the floor of Congress. The President delegated almost complete (dictatorial?) administrative authority to the administrator, whom he chose without senatorial confirmation. The unit and its initial policies thus got a start with no legislative interference—no restraints were imposed upon the selection of employees, nor was there any check on administrative expenses, or on loan policies. Funds were derived from a huge appropriation of 1935 which was under presidential control.

Once an agency is under way, performing a service which appeals to thousands of citizens and hence to their congressmen, with no visible expense to the taxpayers except the indefinite costs of administration, with a group of employees desirous of maintaining their positions, and finally, with favorable public opinion fostered in part through a skilful publicity unit, it is not a long or difficult transition to relative permanence under an act of Congress. It is easy and convenient to accept the unit as organized and functioning, assuming that it is efficient and indispensable. Entirely independent of any other agency or old-line department, R.E.A. was continued with practically the same broad powers as given by the President in his executive order, except that the administrator was to be appointed for a definite term of 10 years with senatorial confirmation, available loan funds were fixed at a maximum of 410 millions for ten years, and loan terms were partially laid down. Administrative expenses, the number of employees and their compensation and selection, and for all practical purposes the determination of loan policies—these were delegated by Congress to the administrator.

(2) R.E.A. reduces state authority. Through control over loans, R.E.A. may influence retail and wholesale power rates and thus diminish the regulatory authority of the states acting through their legislatures and

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utility commissions. Likewise, through stipulations as to the type of construction acceptable, a similar result may ensue. These apparently innocent incursions may be far-reaching in their ramifications.

(3) R.E.A. affects private business. To date, there have been no defaults on loan repayments; eventually there are bound to be some failures, resulting in loss of federal funds unless the government can sell the acquired property to cover the unpaid balance. Should the government be unable or unwilling to sell, it would then be operating transmission lines, and perhaps generating plants as well. R.E.A. has not settled on any policy to meet this situation, but its enemies profess to see a dark plot to extend public ownership, while at the same time certain liberals or radicals belabor R.E.A. for not having taken a stand in favor of public ownership (see Paul Ward's editorial in *The Nation* for March 27, 1937). Should lines be sacrificed to the private utilities, either by the borrowers or by the government, private business would be receiving an indirect subsidy, getting the lines and the established business at a bargain price.

Direct benefits to private enterprise accrue from line-building. Manufacturers of wire and parts, and makers of electrical equipment, benefit directly; the power companies also gain, since they sell power at wholesale without expensive line-construction costs.

The borrowers receive the benefits of federal payment of administrative costs, low interest rates, and free aid and advice of an engineering and legal nature; they are able thus to build lines more cheaply than the utilities, and are under no compulsion to create dividends for stock- and

R.E.A. PROJECT LOANS AS OF DECEMBER 31, 1936,
BY TYPE OF BORROWING ORGANIZATION

Type of Borrower	*Contracts*		*Amount*		*Miles*		*Customers*	
	Number	*Per Cent*	*Amount*	*Per Cent*	*Number*	*Per Cent*	*Number*	*Per Cent*
Private-non-profit, or Limited Profit	11	10.09	$2,415,000	10.04	2,101.	9.39	8,118	9.73
Private	10	9.17	793,267	3.30	791.52	3.54	3,615	4.33
Municipal	7	6.42	1,595,058	6.63	1,468.15	6.56	4,040	4.84
Coöperative	80	73.40	18,699,476	77.77	17,502.30	78.23	65,496	78.55
Public	1	.92	542,328	2.26	511.	2.28	2,128	2.55
Total	109	100.00	$24,045,129	100.00	22,373.97	100.00	83,397	100.00

bond-holders. Competition extends in occasional instances to the generation of power. Private companies may borrow from R.E.A. only after preference has been given to other types of applicants. The accompanying table shows that 109 loan contracts were executed to December 31, 1936, of which only 10 were to private companies. The government is thus furthering the coöperative movement through R.E.A. loans, and dealing a direct blow at private business.

E. F. Dow.

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Mr. Justice Black and "Senatorial Courtesy." On August 12, President Roosevelt nominated Senator Hugo L. Black of Alabama to be an Associate Justice of the United States Supreme Court. On receipt of the message, Senator Ashurst moved for its immediate consideration on the ground that "whenever the Executive honors this body by nominating a member thereof, that nomination is confirmed without reference to a committee, for the obvious reason that no amount of investigation or consideration by a committee of the Senate could disclose any new fact or shed any new light upon the character, attainments, and ability of the nominee, because if we do not know him after long service with him, no one will ever know him."[1]

So far as Senators Johnson and Burke were concerned, this appeal fell on deaf ears, and the nomination was accordingly referred to the Judiciary Committee. A sub-committee, headed by Senator Neeley, held a brief session, reported the nomination favorably to the full committee, and the latter, on August 16, voted to endorse the nominee. Before the matter was brought up on the floor, however, the opposition to Senator Black fell back to a second line of procedural defence. In brief, the failure of the Committee to hold public hearings on the nomination was condemned as a departure from accepted practice.[2] Both committee reference, and of course public hearings by the committee, would have been foreclosed had Senator Ashurst's argument prevailed, and this fact lends renewed interest to the subject of senatorial courtesy.

In its narrowest and most exact sense, "senatorial courtesy" requires that the body of senators be guided in its action on a nomination by the attitude of the senators from the state immediately affected by such nomination. It is clear that this is not the meaning of senatorial courtesy in the present case. The Senate was not being asked to demonstrate its confidence in the judgment of certain of its own members as to the qualifications of a third party. Nevertheless, it is not amiss to observe that senatorial courtesy in this narrow sense has little application to Supreme Court appointments. It is quite true that assignment of the justices to circuits did, at one time, entail a custom of choosing them from such circuits. And along with this localization of appointments went the custom of consulting the appropriate senators. But, long before actual circuit-riding had become a thing of the past, this custom had given way to a more catholic mode of selection. Warren recounts that Jefferson polled all the members of Congress from the states affected by the crea-

[1] *Congressional Record*, 75th Congress, 1st Session, p. 11214.

[2] E.g., by Senator Bridges, *op. cit.*, p. 11491. It may be observed, in passing, that the practice of holding public hearings is decidedly not one of long standing, whatever may be said for its merits. See K. C. Cole, "The Rôle of the Senate in the Confirmation of Judicial Nominations," in this REVIEW, Vol. 28, pp. 875–894, at p. 877.

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tion of a new judgeship before sending a name to the Senate.[3] On the other hand, when the Senate was considering the nomination of Judge Parker, Senator Overman pointed out that the 4th Circuit had not been represented on the Bench "since the days of Iredell and Moore."[4] The conception of the Supreme Court as a source of patronage is no longer part of our unwritten constitution. Senatorial courtesy does not, then, in its text-book sense, apply to the Supreme Court. What is the other sort of senatorial courtesy which justified Senator Ashurst's reference to an "immemorial usage" of the Senate requiring instant confirmation of a nomination to the Supreme Court without reference to committee?

With the exception of the two previous cases in which a sitting member of the Senate has been honored by such an appointment, it has certainly been the custom to refer these nominations to committee,[5] and of course the standing rules of the Senate today clearly contemplate reference in all cases.[6] It is further interesting to observe that in all seven cases in which ex-senators have been nominated,[7] committee consideration has preceded action by the Senate. In three instances, there was an adverse committee report,[8] and in one case[9] a favorable report was recommitted and authority to send for books and papers given to the committee.

It appears plainly enough from the foregoing that the Senate has been quite as rigorous in its procedure when dealing with the nominations of recent colleagues as it has in dealing with nominations generally. And it is also reasonable to suppose that the Senate was, on the whole, as well informed as to the capacities of such recent colleagues as if they had continued to sit in that august body.

When we come, then, to the procedure to be followed in dealing with nominees drawn from the sitting membership of the Senate, there would seem to be no *prima facie* case for senatorial courtesy. But Senator

[3] *The Supreme Court in United States History* (Boston, 1928), Vol. 1, pp. 299–300. As it happened, the high man in this poll was ineligible because he was a member of the Congress which had created the post.

[4] *Congressional Record*, 71st Congress, 2nd Session, p. 7808.

[5] There have been some exceptions. The nomination of Henry Baldwin (confirmed January 4, 1830, by a vote of 41 to 2) was not referred to committee. And in the course of debate on the nomination of John J. Crittenden (which *was* referred to committee), on December 17, 1828, it was protested that it had never been the custom to refer *any* judicial nominations to committee. See *Congressional Debates*, Vol. 5, pp. 90–93.

[6] Senate Document 150, 72nd Congress, 2nd Session (1932), p. 43.

[7] John J. Crittenden of Kentucky in 1828; John McKinley of Alabama in 1837; George H. Williams of Oregon in 1873; Stanley Mathews of Ohio in 1887; Roscoe Conkling of New York in 1882; and Lucius Lamar of Mississippi in 1887.

[8] John J. Crittenden (postponement), Stanley Mathews, Lucius Lamar.

[9] That of George H. Williams. See *Journal of Executive Proceedings of the U. S. Senate*, Vol. 19, p. 189.

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Ashurst says there is an immemorial usage to this effect. As a matter of fact, if we confine the inquiry to Supreme Court appointments, it would be hard to find any usage on this point at all. The nomination of Senator Edward Douglass White to the Court was indeed confirmed by something like acclamation,[10] but in the only other instance in which the Senate has been so honored, the candidate was defeated after bitter debate by a vote of 26 to 25.[11]

Nor are the circumstances attending Senator Black's own nomination likely to strengthen the case for a display of senatorial courtesy. Without reflecting at all on the legal capacity of the recently inducted member of the Court, it is none the less true that facts which certain senators regarded as highly relevant to their action upon his nomination were not brought out in the Senate debate.[12]

Perhaps it is naïve to assume that senators were as completely ignorant of the facts as they professed to be. But in this case the argument for open public hearings is considerably stronger. Hearings in this situation would not be merely for the information of the Senate. They might also have the effect of publicizing certain facts and thus making it politically dangerous for the Senate to ignore them. All in all, the events subsequent to the confirmation of Justice Black's nomination suggest that, not only committee reference, but committee hearings, should be in order in the case of all Supreme Court nominations.

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[10] Professional opinion, while not opposed to White, was hardly in sympathy with the Senate procedure employed, in view of the fact that the Senate had just rejected the nominations of William B. Hornblower and Wheeler H. Peckham, both of whom were highly esteemed at the bar. See *American Law Review*, Vol. 28, pp. 274–276.

[11] The nomination of George E. Badger of North Carolina by President Fillmore on January 1, 1853. See Warren, *op. cit.*, Vol. 2, pp. 242–244.

[12] For example, Senator Borah, who said definitely that he would vote against a member of the Ku Klux Klan for any position, but who deprecated investigation because of senatorial courtesy. *Congressional Record*, 75th Congress, 1st Session, p. 11652.

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MUNICIPAL AFFAIRS

EDITED BY WILLIAM ANDERSON

University of Minnesota

Municipal Government and Labor Disputes. As a means of settling labor disputes, strikes benefit no element in the community. Their financial costs to workers, industry, capital, consumers, government, and society cannot be accurately totaled but may be amply demonstrated.[1] Strikes are costly not only in terms of money, but also because they prejudice just and intelligent solutions of the essential issues of wages, working conditions, and industrial control. Solutions which are compelled by violence or coercion are adequate only by unlikely coincidence.

American governments on all levels are assuming responsibility for so regulating labor disputes that violence and strikes shall become unnecessary factors in their negotiation. Governments are recognizing the urgent necessity of discovering alternative, less costly, and more peaceable methods of negotiating fair shares of industrial income and control of industrial policy. There is widespread interest in the rôle of the national government through such agencies as the conciliation service of the Department of Labor and the National Labor Relations Board and in the rôle of the states through "baby Wagner acts" which have been passed in such states as Wisconsin, Pennsylvania, Utah, Massachusetts, and New York. Municipal governments are contributing to the newer techniques being evolved in the field of labor relations, not only through local labor relations boards which are emerging in a few communities, but also through new, or at least modified, techniques of control both before strikes break out and during their actual duration.

Urgent problems confront American city government when labor and capital sharpen their economic and political weapons for conflict on the industrial front. The basic problem of preserving "law and order" has traditionally characterized labor disputes, but changes in labor organization and strike techniques have altered the face of the problem. The problem of the city, which is concerned with maintaining fair and equitable labor relations, is not simplified by the fact that both labor and capital are organized on a national scale as never before and in the case of some industrial conflicts are quite beyond the scope of effective control by a single city government.

The one best remedy for strikes is their prevention—a responsibility which rests primarily not on local government but on employer, labor, and state and national governments. Local government can contribute

[1] For a collation of isolated data on the cost of strikes, see Lyman S. Moore, "Maintaining Industrial Peace," in *The City's Rôle in Strikes* (International City Managers' Association, 1937), pp. 23–24.

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in a minor way to the establishment of fair labor relations, which are the best preventive of strikes, in its capacity as a model employer and by its influence on local industry through business and industrial associations; but the influence of the individual city is significant primarily where industries are purely local in character. Where industry is intermunicipal or interstate, its labor relations are almost completely beyond the scope of one city's isolated efforts. The city can also in a preliminary way diminish the chances of violence by providing conditions of free speech which will furnish a peaceable outlet for strong emotions and conflicting opinions. The maintenance of free speech and other civil liberties is considered by the philosopher as a worthy ideal in itself, but opportunity for all elements to be heard is being recognized by the intelligent police chief and city administrator also as a tactic of expediency.[2]

The influence of city governments on industrial relations is sharpened when a dispute is imminent or breaks out, and it is the city's direct relation to actual disputes that is of primary interest. Here the city government has the three-fold objective of providing a medium for the intelligent and peaceful negotiation of disputes, maintaining law and order in the event that a strike breaks out, and preserving at all times an attitude of "neutrality" in its relations to all parties concerned.

The city must assume its share of governmental responsibility for providing effective machinery for the negotiation of disputes. Industrial peace cannot be justified merely on the ground of preserving the status quo if this involves also the maintenance of unfair labor relations, and labor organizations which have no other tool at their command in the struggle with organized capital for a better livelihood and a more influential voice in industrial management cannot be too harshly condemned if they resort to the coercion of the strike. As yet, municipal governments have only begun to scratch this problem with the formation of industrial peace boards in Toledo, Philadelphia, Newark, and New York.

The pioneer of these boards was the Toledo Peace Board, initiated in the summer of 1935 at the suggestion of Edward F. McGrady, then assistant secretary of the United States Department of Labor. The membership consisted of 18 citizens, 5 nominated by the central labor union, 5 named by the local chamber of commerce, and 8 selected by Mr. McGrady. The representatives at large included two judges, two attorneys, a Catholic monsignor, a Jewish rabbi, a merchant, and the county relief director.

During the first eight months of its existence, the Board was entirely

[2] For a more extended discussion of the preliminary contributions which municipal government can make to industrial peace, see Donald C. Stone, "The Public Interest in Labor Disputes," in *The City's Rôle in Strikes* (International City Managers' Association, 1937), pp. 5–9.

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a voluntary agency and had no relation to the municipal government. On March 30, 1936, however, the city of Toledo assumed responsibility for the financing of the Board under an ordinance which permits the mayor to fill any vacancies. Members of the Board serve without compensation, but a full-time director is employed.[3] The Board was authorized to expend not more than $7,250 during 1937.

The principles that have been announced as governing the action of the Toledo Peace Board are as follows: (1) Members of the Board should never vote on the question of an issue being right or wrong, but should strive to find that which is fair and suggest it to the parties in dispute; they may accept or reject. (2) Members cannot and should not order anyone to do anything. The mere fact that a union or employer can lose nothing through dealing with the Board will make for greater confidence in and coöperation with the Board. (3) Services of the Board are always conciliatory, and arbitration never should be undertaken by any member, or even the director, though both parties may agree to it. Even if the Board should arbitrate fairly at all times, confidence in it would be lost in some quarters. (4) The Board cannot promote organization of employees, nor can it interfere with such organization activities.[4] During its brief history, then, the Board has served merely as a conciliatory agency and has been the means of bringing about peaceful negotiation through the efforts of its director and its members. In July, 1936, it was reported that "since the Peace Board became effective, no labor situation has developed to anything like the extent of ugliness which characterized the earlier labor troubles in the Toledo area. Only one difficulty has developed into a strike of any stubbornness. In that case, while both parties were somewhat reluctant at first to throw their cards on the table before Peace Board representatives, those representatives had a major part in the settlement."[5]

It appears that the Toledo Peace Board has secured prestige and position for itself in the community, as far as the public, newspapers, labor, and management are concerned. In no case has it attempted to coerce either party to a dispute, but its position is such that when it publicizes its willingness to serve as negotiator, this constitutes legitimate pressure on the parties, because of public feeling on the question. The mere knowledge that conciliatory machinery exists and is quietly at work tends to allay public excitement and to minimize the crisis of a dispute. The very existence of the Board also serves as a restraining influence on both em-

[3] *Ordinance of City of Toledo Providing for the Continuation of the Toledo Industrial Peace Board, etc.*

[4] Edmund Ruffin, "The Toledo Industrial Peace Board," *Toledo City Journal*, Feb. 6, 1937.

[5] Carlton W. Matson, "Toledo's Plan to End Strikes." *Nation's Business*, July 1936.

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ployer and labor. Employers who ask for police protection during a strike come before the city administration with unclean hands if they have not made every reasonable effort to utilize the good offices of the Board, while an intransigent labor organization must run the gauntlet of public opinion if it finally determines to strike without giving fair consideration to the Board's proposals.

The Mayor's Labor Board in Philadelphia has followed the Toledo plan in its general features, but has adopted the procedure of referring disputes in the first instance to a panel of two, one representing labor and one industry.[6] This technique, followed by the Philadelphia Regional Labor Board of the first National Labor Board, was first recognized by Lloyd K. Garrison as having psychological advantages. He has pointed out, in support of this procedure, that a representative of each side will be more apt to reach an agreement to which both can subscribe because "there is no neutral or public representative present before whom they might be tempted to serve merely as advocates for the respective disputants."[7] Experience with the two-man panel is by no means conclusive, but it tends to confirm this psychological conjecture.

No local labor board yet established has been specifically authorized to arbitrate. The Toledo Board has expressly eschewed this function as tending to impair its usefulness. An indication that the Newark Board, unappointed at the time this note was written, may in the future perform arbitration duties is negatively implied in the stipulation of its ordinance that "the Board shall not function as an arbitration body without the consent of accredited representatives of both sides."[8]

A plan proposed by Dr. Charles A. Prosser of Minneapolis, which promises to receive a wide hearing, carries formal conciliation machinery a step farther by providing what may be termed "suspensory" mediation. Employer and employee organizations under this plan would agree in advance to call neither strike nor lockout until a conference and the mediation services of the local board have been refused by the other party.[9]

A next and final step beyond this proposal is to provide compulsory arbitration, which, until the Supreme Court speaks to the contrary, is regarded as unconstitutional.[10]

[6] Letter from M. Herbert Syme, counsel assigned by the mayor to act as the executive officer of the Board.

[7] For complete discussion of this technique, see Garrison, "New Techniques in Labor Settlements," in *Survey Graphic*, April, 1935, pp. 164 and 198.

[8] Section 5 (c) of "An Ordinance to Establish a Labor Relations Board for the City of Newark," passed in the spring of 1937.

[9] For a fuller outline of this plan, see Charles A. Prosser, "A Plan for Adjusting Labor Disputes," in *Public Management*, Vol. XIX, no. 6 (June, 1937), pp. 163–164.

[10] The leading case deciding against the state's right to require employers and workmen to submit to compulsory arbitration is Wolff Packing Co. v. Court of In-

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The local labor relations board is, of course, no conclusive solution of labor difficulties. At best, it can be only supplementary to state and national mediation and arbitration bodies and will prove most useful where the dispute is entirely localized. The mediation efforts of local officials can prove of minor utility, however, even in a dispute of interstate proportions, as demonstrated by a city manager's ability to mediate the evacuation of "sit-down" strikers pending final negotiation of the automobile strike early in 1937.[11] Just as the local labor relations board is not adequate in cases of disputes which transcend city boundaries, so should it not be considered a substitute for regular intra-plant grievance machinery to handle complaints of individual workmen. Outsiders cannot be expected to spend valuable time in handling routine shop cases of this type.

The establishment of a board which will be clearly recognized by all to represent the community interest is no easy task. The question of representation also becomes difficult when labor, which merits no more than an equal voice with capital on the board, finds itself split in bitter conflict between two or more vigorously competing groups.

When a strike breaks out, it is, as one writer puts it, "no strawberry festival." Local officials are immediately asked to deputize special police paid either by industry or by the city. Many city officials have rightly refused to clothe with public authority persons employed by either party to the dispute, although if violence and law violation are imminent, there can be no legitimate objection to augmenting temporarily the police force with city-paid deputies. Wise public policy, however, will decree that these deputies be local men who are well known to the strikers rather than "gunmen" from the outside, who are always under suspicion. To quote one city manager, "I would rather take my chances on preserving order with three local policemen whom strikers have known and trusted for years, than with a hundred deputies imported from outside, who by their very lack of acquaintance will be more apt to incite than to quell violence."

When a strike breaks out, whether of the "walk-out" or "sit-down" variety, local government's primary purpose is to prevent the outbreak of violent warfare without prejudicing the position of either side to the dispute. The difficulties which beset the police who attempt to keep a picket line "peaceful" in the face of attempts on the part of industry to operate the plant have long been recognized, but only recently has there been concerted effort on the part of police chiefs so to train their forces that mass

dustrial Relations, 262 U.S. 522. This decision, however, does not apply to businesses which the court may find to be "clothed with the public interest."

[11] Cf. Henry Traxler, "I Went Through a Strike," in *The City's Rôle in Strikes* (International City Managers' Association, 1937), pp. 14–18.

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action can be peacefully controlled. Limitation of picketing by ordinance is being tried as a means of permitting strikers to exercise peaceful persuasion without the dangers which always attend mass congregation of men intent on fighting to preserve their economic interests. An example of an attempt to provide a police force with a sound statement of policy incorporated in a police manual is the set of regulations issued by Police Commissioner Lewis J. Valentine of New York City. Among other things, these regulations recognize the legality of peaceful picketing and of a "peaceful, orderly strike," discourage the employment of "professional bullies and thugs by either side," limit the number of pickets in the discretion of the commissioner, and require full reports on all incidents of the strike from the police officer in charge.[12] Many cities are recognizing that to give full effect to regulations of this type requires careful training to which police forces normally are not subject, even in the wave of training schools that have appeared in all parts of the country. Police officers are therefore being required to read literature on labor relations and to receive training in when and when not to use firearms, tear-gas, and other mob-quelling weapons. That such training is by no means widespread is evidenced by the tragic failure of Chicago's police in the Memorial Day (1937) encounter with strikers, which resulted in ten strikers being killed and many police and workmen injured. This encounter may be called a "riot" if one is sympathetic with the employer, or a "massacre" if one leans towards the strikers; but the casualty list bears mute but frightful testimony to police failure to prevent violence in one form or the other.[13]

When police control is clearly inadequate for the purpose, local officials must turn to state enforcement agencies. Where there is a clash of economic opinion between mayor and governor, this may sometimes lead to unexpected results. Thus when the mayor of Johnstown, Pennsylvania, decided that the state militia was needed to "protect the right to work," he found the state governor willing to supply the troops, but in the first instance for the purpose of closing the plant in order to avoid violence instead of supporting the company's determination to keep the plant open.[14] Despite these incidental conflicts of opinion as to what constitutes "law and order," it is clear that the governor's authority is superior and the interest of the state which he represents paramount to a decision of a local official, particularly where the use of the state militia is involved.

Consideration has been given in at least two cities to an ordinance that

[12] *Manual of Procedure of New York Police Department*, Art. XXXII, pp. 211–212.

[13] For a vivid description of this encounter taken from newsreels, see *St. Louis Post-Dispatch*, June 16, 1937.

[14] Cf. *New York Times*, June 20 and 21, 1937.

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would permit the mayor or chief of police, whenever a refusal by an employer to bargain collectively "causes the assemblage of two hundred or more persons within an area of one-half acre on the streets adjacent to the plant," to declare the further operation of the plant a "public danger" and a "public nuisance." The mayor is authorized by this ordinance to appoint a committee representative of labor, employers, and the clergy to make advisory findings on the question of whether there has been a refusal to bargain collectively and whether such a refusal constitutes a public danger. If the mayor or police chief determines that a public danger exists according to this definition, he is authorized to close the plant.[15] This ordinance was passed by the Milwaukee city council in 1935, but the machinery was never put into action. In fact, it was made so important an issue in a subsequent city election that the ordinance was repealed on June 22, 1936. A similar ordinance was proposed and defeated in Cincinnati in 1936.

The "sit-down" strike has injected problems of its own. The sit-down strike splits the supposedly unitary objective of preserving "law and order," and police who are obliged by court order to evict strikers who are both embattled and entrenched have to choose between enforcing the law and provoking violence by their own act or maintaining order at the expense of law enforcement. The choice is often not a free one, as the latter alternative may constitute contempt of court. Judges who are asked to issue eviction orders sometimes forget that law enforcement and public order are not always identical.[16]

The city has an interest in the sit-down strike from the standpoint of health and welfare as well as law enforcement. Factories are not equipped as dwellings and may fall under the ban of the building code if used for that purpose, either by strikers or by employers who are seeking to house loyal workers in an attempt to operate the plant without running the picket line. During the steel strike, Chicago's mayor threatened to evict the steel company's workers because of violation of the building code and health ordinances, but the company apparently met the official complaint by housing the workers in Pullman cars.[17]

[15] *An Ordinance to Create Sections 1036.1 to 1036.6, Inclusive, of the Milwaukee Code of 1914*, passed September 30, 1935.

[16] Early in 1937 occurred two excellent examples of this choice. During the strike of the Fansteel Metallurgical Corporation in North Chicago, Illinois, the sheriff's forces of Lake county chose to enforce a court order and ejected sit-down strikers by violent use of tear-gas and an ingenious tower. During the General Motors strike in Flint, Michigan, however, city police postponed giving effect to a similar court order until the sit-downers withdrew voluntarily as a result of an agreement reached in Detroit. For a general discussion of the police problems raised by the sit-down strike, cf. Arnold Miles, "What a Strike Means to a Police Department," in *The City's Rôle in Strikes* (International City Managers' Association, 1937), pp. 10–13.

[17] Cf. *New York Times*, June 5 and 8, 1937.

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The city is not altogether unconcerned with strikes among its own employees, despite the general tendency on the part of all groups to accept Governor Calvin Coolidge's dictum following the Boston police strike of 1919 that "there is no right to strike against the public safety by anybody, anywhere, at any time." Adverse publicity following the strike of Boston police put a quietus on unionization of police, and although firemen are affiliated with the American Federation of Labor through the International Association of Firefighters, the constitution of the latter organization expressly forbids strikes. This prohibition is taken seriously and was given concrete effect late in 1936 by the expulsion of a Canadian local which had voted on a proposal to strike.[18] More recently, however, Chicago budget-makers have been confronted by a union of electrical workers which has conducted a demonstration strike tying up the city's bridge communications and throwing city streets into darkness as a means of compelling restoration of pay-cuts.[19] The finance committee of the city council was later threatened with a repetition of this procedure and was placed in an awkward position by the competing demands of a street workers' union opposing the diversion of gas-tax funds, which appeared to be the only available method of making the pay restoration.[20] Proponents of sound budgets will quickly recognize the damage that can be done by rival pressure groups of this type within the city hall. However, municipal administrators must recognize the necessity in the future for dealing with employees on an organized basis. The American Federation of State, County, and Municipal Employees is already established as an A. F. of L. affiliate, and a parallel organization affiliated with the C.I.O. has been organized as the state, county, and Municipal Workers of America. A C.I.O. affiliate has already entered the national field under the name of the United Federal Workers of America, where it will compete for the allegiance of federal employees with the A. F. of L.'s American Federation of Government Employees and the non-affiliated National Federation of Federal Employees.

One of the principal demands upon local authorities is that they remain neutral in an economic controversy. As one city manager says, "[during a strike] I find that men do not think straight. Their jobs, their business, and their future are at stake, and the problem presents so many dire possibilities that the ability to try calmly to reason the thing out evaporates. During such a time, the 'hot heads' must be controlled, all fantastic

[18] See George J. Richardson, "Labor Unions in Fire Departments," in *Public Management*, Vol. XIX, no. 1 (January, 1937), pp. 6–9. The best comprehensive discussion of the unionization of public employees, which contains a strong argument in support of the right to strike, is Sterling D. Spero, "Employer and Employee in the Public Service," in *Problems of the American Public Service* (McGraw-Hill, 1935).

[19] *Chicago Daily News*, Jan. 23, 1937.

[20] Cf. issues of *Chicago Daily News* for several days following June 22, 1937.

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schemes discarded, and above all, the controversy must not be constantly excited by pressure groups. We went through a strike and did it peaceably, I believe, because we used common sense and were willing at all times to talk matters over with all groups; because we insisted that the present governmental machinery would function during a crisis as well as during normal times; because we believed that the men involved could be shown that after their difficulties had been ironed out they all would have to work together again and that during the controversial period the observance of law, order, and good sportsmanship would make such working together possible."[21]

Some will deny that a "neutral" attitude is possible, and will contend that the direction of politics and public administration is determined by economic interest and sympathy. The workingman often believes that all who are not "for" him are necessarily against him, or conversely, the employer is certain that a police force which does not go the limit in "protecting property" is controlled by anarchists. In such a situation, the symbols of the dispute become interchangeable. The employer's "loyal workman" is the striker's "scab." The employer's "identity of property and human rights" becomes the striker's subordination of his right to his job to profits and capital.[22] If the public official is analytical, he may conclude that it is impossible to maintain harmonious peace in the midst of a conflict which is real and not apparent, but this conclusion should not sway him from his purpose of maintaining fair conditions for the fight as an inducement to industrial peace. His task is not made easier by lack of definite interpretations of such important concepts as "collective bargaining," "signed contracts," and "union responsibility." These concepts await the definitions which come from administrative practice as well as from legislative enactment and court decisions.

The public administrator who seeks in the public interest to steer between capital and labor is beset on all sides. It may, indeed, be the criterion of his success to be equally damned by both. A cool head, an abiding sense of responsibility for preserving the public interest, and a determination to approach the ideal of reducing violence to the vanishing point are what a community should expect of its hard-pressed municipal officials.

LYMAN S. MOORE.

International City Managers' Association.

The Present Status of Municipal Housing and Slum Clearance in the United States. Housing has at last come into its own. Not housing for

[21] Henry Traxler, *op. cit.*, pp. 17–18.

[22] For brief statements of what various interest groups expect of a city government during a strike, see *The City's Rôle in Strikes*, pp. 3–4.

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its own sake, but housing as a means of "increasing employment quickly," was the avowed purpose of the housing provisions of the three acts under which the national government's low-rental housing program has to date been carried forward.[1]

The United States Housing Act of 1937,[2] popularly known as the Wagner-Steagall Act, provides primarily for "financial assistance to the states and political subdivisions thereof for the elimination of unsafe and insanitary housing conditions and for the development of decent, safe, and sanitary dwellings for families of low income." Reduction of unemployment and the stimulation of business activity are important but secondary objectives.

The significance of this shift in emphasis extends beyond the mere fact of the government's belated recognition of its moral responsibility to assume leadership for improving the housing conditions of the underprivileged. While housing was regarded only as a means to an end and not as an end in itself, the building program suffered. Funds were uncertain and were frequently diverted to what seemed more immediate means of achieving the emergency end in view. Moreover, long-time planning with its many economies and other advantages was quite impossible.

The creation of a United States Housing Authority, a body corporate of perpetual duration and singleness of purpose to administer a federal program of assistance to low-rental housing, is therefore an event of some moment. It puts housing for the poor on an equal footing, so far as assurance of the federal government's continued interest is concerned, with housing for those who can afford to own their homes or pay an economic rent.

While low-rent housing has thus been freed of its "relief" shackles, it is still tied to slum clearance—how seriously depends upon administrative interpretation. An amendment affixed by Congress to the original form of the bill requires that "the project" must include the demolition, effective closing, or compulsory repair and improvement of unsafe and insanitary dwellings substantially equal in number to the units to be constructed. It is, of course, highly desirable that communities establish and maintain minimum housing standards and that they eliminate as rapidly as possible structures that fall below. It is most undesirable that the effort to accomplish this should in any way obstruct the provision of new dwellings.

The possible dangers of a slum clearance restriction are exorbitant land

[1] The Emergency Relief and Reconstruction Act of 1932, Public No. 302, 72nd Congress; the National Industrial Recovery Act of 1933, Public No. 67, 73rd Congress; and the Emergency Relief and Appropriation Act of 1935, Public Resolution No. 11, 74th Congress. [2] Public No. 412, 75th Congress.

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costs and a prohibitive shortage of dwellings during the construction period. Fortunately, the second of these has been obviated by a clause authorizing the Authority to permit deferment of the elimination of unfit buildings under conditions of shortage "so acute as to force dangerous overcrowding" of families of low income. Unless the requirement that the project shall include demolition, etc., can be interpreted liberally to include any such undertaking by a local governmental agency anywhere in a community, it would seem that for the present the "shortage" clause offers the only escape from the necessity of building on slum land purchased at speculative prices. There is no doubt that in most communities serious shortages in low-rental property do exist and are daily becoming more acute.

The third big handicap of the housing program during the past five years—centralized control of an undertaking peculiarly subject to local conditions, and therefore unsuited to central control—has definitely been put to an end by the United States Housing Act of 1937. Centralized control was in the first place brought about through circumstances rather than by legislative necessity.

When, in the summer of 1933, Congress authorized loans and grants to states, municipalities, and other public bodies for slum clearance and low-cost housing, only two cities in the country, Los Angeles[3] and Milwaukee,[4] were prepared under existing laws and ordinances to take advantage of the offer. Ten states during the next two years passed housing authority laws, but at the end of 1935, when the last of the projects developed by the P.W.A. entered the construction phase, only a third of the cities with projects had housing authorities. The authorities were, moreover, for the most part new and inexperienced.

Today 30 states,[5] the District of Columbia, Hawaii, and Puerto Rico have housing-authority legislation. Forty-nine authorities have been established under these laws, and a good many have gained considerable experience through coöperation with the federal government in the development of its "demonstration" projects. Under the Wagner-Steagall Act, it is mandatory that the projects already built be leased or sold to the local authorities "as soon as practicable" and that all future projects be developed by them.

With local responsibility for the development and management of

[3] Article 25, Los Angeles City Charter.

[4] Laws of Wisconsin, 1913, Ch. 678; Wisconsin Laws of 1933, Ch. 479; Ordinance 139 of City of Milwaukee.

[5] Alabama, Arkansas, Colorado, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Montana, Nebraska, New Jersey, New York, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Vermont, West Virginia, and Wisconsin.

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housing has come the requirement that the states or communities share in the cost. This injects a new element of uncertainty into the program. It is unquestionably desirable in principle that the localities share the cost of providing adequate housing accommodations for their citizens. Some observers believe; however, that the local units of government are not at present in a position to do so and that the whole program will be jeopardized by this provision. Time will tell. Meanwhile other competent observers point out that upon analysis the requirements seem fairly lenient and entail no more local contribution than has been made to existing projects.

A local authority may borrow from the United States Housing Authority up to 90 per cent of the funds necessary to develop a project. The other 10 per cent will have to be found elsewhere, provided the local authority wishes to obtain, in addition, the federal subsidy without which low-rental housing would be impossible. Since the federal government may accept less than first mortgage security, borrowing 10 per cent locally should not be too difficult.

There is, however, another condition for federal subsidy. The states or communities must themselves supply a 20 per cent capital grant or 20 per cent of the annual contributions provided by the Act,[6] depending upon the form of subsidy they elect to receive from the federal government.

Annual contributions will undoubtedly be much the easier for states or localities to provide. Since these may be made in the form of tax remissions or exemptions instead of in cash, they should not prove a serious obstacle, at least to large communities. If a community should elect to make a 20 per cent capital grant, it may do so in the form of cash, land, or the capitalized value of community facilities, tax remissions, or tax exemptions.

To carry out the provisions of the Act, Congress has authorized appropriations of $26,000,000 for the fiscal year ending June 30, 1938, and bond issues over a three-year period of $500,000,000 from the proceeds of the bonds, the subsidies paid from appropriations.

In order to insure low rents and low income tenancy, a five-to-one income rent ratio (six-to-one in the case of large families) was written into the act, and various restrictions were placed upon construction costs: (a) projects may "not be of elaborate or expensive design or materials"; (b) the average construction cost per dwelling unit may not exceed the average cost of units privately produced in the same locality under building laws applicable to the housing project and under similar labor

[6] The wording is ambiguous and may mean either 20 per cent of the annual grant made by the federal government or 20 per cent of the total grant by both federal and local governments.

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standards; (c) in cities under 500,000, the cost may not exceed $4,000 per unit or $1,000 per room, and in larger cities $5,000 per unit or $1,250 per room.

Although not serious enough to prevent building, the definite limitation on construction costs and the income of tenants would better not have been written into law. Both are matters in which a high degree of flexibility would seem desirable to meet highly variable conditions in various parts of the country. Moreover, the rent a family pays bears no mathematical relationship to its other needs, and if very low rentals were achieved the formula would automatically reduce the maximum income permitted to a point where a family, after paying its rent, would have insufficient income to live on. Finally, the Authority has adequate powers to insure the low-rent character of projects without such a provision. These include the right, upon breach of agreement to maintain low rents, to raise the interest rate on loans, to declare the unpaid principle due at once, or to terminate annual contributions.

The decentralized program which will be carried out under the United States Housing Authority starts with a considerable heritage from the five-year emergency program despite the difficulties encountered in its administration. P.W.A. has developed 51 projects in 36 cities, comprising about 21,500 dwelling units.[7] These will be turned over to the new Authority for sale or lease to state or local housing authorities. After sale, they will be eligible for loans, grants, or annual contributions under the terms of the United States Housing Act. The 60 community type projects comprising 8,104 dwelling units now held by the Resettlement Administration, many of which were started and partially developed by the now defunct Subsistence Homesteads Division of the Department of the Interior and by the F.E.R.A., may also by presidential decree be turned over to the United States Housing Authority.

These projects have provided vastly improved living conditions for thousands of low, if not the lowest, income families. Perhaps more important, they have been the chief means of educating the people of this country to the need for public housing. Opponents of the program have sought to discredit it by insisting that the projects do not demonstrate anything. They have at least demonstrated to the satisfaction of organized labor that public housing is worth working for and not a mere idea toward which it could afford to continue, as in the beginning, to be lukewarm or indifferent.

Every bit as important to the future of housing as the demonstration projects and their educational by-product has been the building of a foundation of law and judicial precedent upon which may be reared a sound decentralized administrative structure.

[7] Exclusive of limited-dividend projects.

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P.W.A. assumed leadership in securing most of the 30 state housing authority laws mentioned above, together with supplementary legislation permitting cities to coöperate with housing authorities in essential ways. Model bills were drafted, submitted to the governors of the various states, and introduced into most of the legislatures by executive request. The models were from time to time revised, and the states themselves made changes. There is, nevertheless, a fairly high degree of uniformity in state housing legislation. All the authority laws provide for the creation of special *ad hoc* bodies with power to construct and operate housing projects and to finance them through bonds secured by their property or the revenue from it. All stipulate that these bonds shall not constitute an indebtedness of the local governments. The application of the laws in all except three states[8] is fairly general, and in a number they apply to counties as well as to towns and cities. New Jersey has a state authority, as does Maryland, although recently a new law was passed in Maryland providing for city, town, and county authorities as well.

The need for an authority is usually determined by the local governing body, with or without public hearing, and appointment of members is usually by the mayor or other chief executive. All except a few of the laws provide for five members with five-year staggered terms. In two-thirds of the states, jurisdiction extends several miles beyond city limits.

All states except one grant housing authorities the right of eminent domain, while Rhode Island provides that cities may condemn for authorities. Twenty states[9] exempt the property of housing authorities from taxation, and nineteen[10] exempt their securities. In addition, property is exempt in Kentucky by court decision,[11] and in Ohio by opinion of the attorney-general.[12] Thirteen states have adopted the "five times" income rent ratio first fixed by the George-Healy amendment[13] to the National Industrial Recovery Act. They include no special provision for large families as does the United States Housing Act. Pennsylvania has a straight "six times" income-rent ratio, and New Jersey sets a minimum rental of $10 a room for first-class cities and $8 a room for others.

[8] The Michigan law applies only to Detroit; the Texas law only to San Antonio; the Wisconsin law only to Milwaukee.

[9] Arkansas, Colorado, Connecticut, Florida, Georgia, Indiana, Louisiana, Maryland, Nebraska, New York (at discretion of municipality), North Carolina, North Dakota, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Vermont, and West Virginia.

[10] Colorado, Connecticut, Indiana, Kentucky, Louisiana, Maryland, Michigan, Nebraska, New York, North Carolina, North Dakota, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Vermont, and West Virginia.

[11] Spahn *et al* v. Stewart *et al*, decided by court of appeals of Kentucky, Feb. 19, 1937.

[12] Opinion 3262, John W. Bricker.

[13] Public No. 837, 74th Congress.

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Sixteen states[14] have passed special housing coöperation laws permitting cities to sell, lease, or donate property to authorities; to furnish parks, playgrounds, and other facilities; and to re-zone or re-plan as necessary. In all except three of these states,[15] cities may also waive local building code requirements in taking over from the federal government projects not in compliance with technicalities deemed unsuited to large-scale housing. Twenty states[16] authorize cities or other localities to donate or loan money to authorities for administrative expenses, and two states, New Jersey and Delaware, themselves assume the responsibility for authority finances. Some states[17] have incorporated certain provisions for coöperation by communities in their authority laws instead of passing supplementary legislation.

In 10 states,[18] authorities are subject to some control or supervision by state boards. Unless additional state boards are created, the federal financing agency, the United States Housing Authority, will exercise the only supervision and control over the authorities in the other states. Obviously, both the state and federal governments should not exercise identical supervision.

There are now several important court decisions upholding the validity of the provisions of housing authority legislation. In the first application by a state or local housing authority for the exercise of eminent domain, a state court of highest jurisdiction, the New York court of appeals,[19] on March 17, 1936, upheld housing as a public use for which land might be taken by the duly constituted creatures of the state. The proceedings grew out of the New York City Housing Authority's effort to acquire property for First Houses, a small rehabilitation project which has the distinction of being the first public housing project completed in recent years and the first, and so far only, project for which a local authority has floated its own bonds. The decision was widely heralded as establishing an important precedent.

About a year later, the Kentucky court of appeals,[20] the highest court of that state, handed down the most comprehensive decision dealing with public housing that has so far been rendered. The case was brought to

[14] Alabama, Colorado, Florida, Georgia, Illinois, Indiana, Maryland, Michigan, Montana, Nebraska, North Carolina, Ohio, Oregon, Pennsylvania, Tennessee, and Texas. [15] Alabama, Montana, and North Carolina.

[16] Arkansas, Connecticut, Florida, Maryland, Michigan, Nebraska, New York, North Carolina, Ohio, Oregon, Pennsylvania, Tennessee, and Vermont provide for donations and loans; Indiana and Massachusetts, for appropriations only; and Delaware, Illinois, South Carolina, Texas, and West Virginia, for loans only.

[17] Arkansas, New York, South Carolina, and Vermont.

[18] Arkansas, Delaware, Georgia, Illinois, Indiana, Massachusetts, New York, Ohio, Pennsylvania, and South Carolina.

[19] New York City Housing Authority v. Muller, 1936, 270 N.Y. 333, 1 N.E. (2d) 153. [20] Spahn *et al* v. Stewart, cit. *supra*.

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test the constitutionality of the law under which the Louisville Housing Commission had been created, and nearly all the major legal issues relating to housing authorities were raised in the pleadings and passed upon by the court.

The Municipal Housing Commission Act was declared constitutional and the court held: (1) that the proposed slum clearance and housing project was for a public and governmental purpose, and that land could therefore be condemned by the Commission for the project; (2) that the property and bonds of a municipal housing commission are issued for a public purpose, and therefore are exempt from taxation under the constitution and statutes of Kentucky; (3) that the Commission might issue special obligation bonds secured by the project and revenue from it, and that such bonds would not constitute obligations of the state or any political division thereof; (4) that the provision of housing for persons of low income is not class legislation, but will benefit the whole community; and (5) that the city of Louisville has the right to appropriate money for the administrative and other expenses of the Municipal Housing Commission.

A third important legal victory was won in May of this year when the United States district court for the District of Columbia upheld the power of the Alley Dwelling Authority for the District of Columbia to acquire property for slum reclamation. The Alley Dwelling Authority, which exists primarily to rid Washington of its inhabited alleys, differs from other housing authorities in that the provision of dwellings for families displaced by slum clearance is an activity secondary to the clearance operation itself. This case[21] tested the power of the Authority to acquire sites by condemnation as a part of its regular program. The question involved was related to, but distinct from, that of whether the provision of low-rent housing is a public use.

Prior to these favorable decisions on the right of the states to use eminent domain for housing, several lower courts decided adversely the question of housing as a federal use for which the federal government might condemn property. These decisions are, of course, less important than the favorable ones, now that it is definitely settled that the housing program of the future will be carried out on a decentralized basis, and that the federal government will not be acquiring real property. No case involving housing as a public use, by either state or federal agencies, has been tried before the United States Supreme Court. The case of United States v. Certain Lands in the City of Louisville,[22] involving condemna-

[21] United States District Court of Appeals for the District of Columbia, No. 2464, "In the matter of the acquisition of part of lot 29, etc."

[22] United States v. Certain Lands in the City of Louisville, Edward J. Gernert, *et. al.*, July 15, 1935. 78 Fed. (2d) 684.

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tion proceedings in connection with a project in Louisville, and a similar case involving an addition to a project in Detroit, which had been carried to the Supreme Court, were dismissed upon motion of the government on the ground that as a result of the long delay the funds had been diverted to other projects and that the cases, as a practical matter, had become moot.

ELIZABETH LONGAN.

National Association of Housing Officials.

State Leagues of Municipalities and the American Municipal Association; An Experiment in Coöperation Among Municipal Officials. Municipal officials in 40 states are today coöperating with one another through leagues of municipalities to provide means whereby they may bring the needs of the urban population to the attention of their state legislators and inform themselves as to most efficient practice in the field of public business. These leagues include some 7,000 municipalities as league members, and many more are using league services. The first league was organized 46 years ago, the fortieth in February, 1937. The degree of service, of course, varies as between leagues, owing to differences in strength and financial ability. A few have little more than an annual meeting and limited legislative work. Most leagues, however, carry on a wide range of services such as training schools for city employees, complete information exchange, legislative counsel, monthly magazine, radio programs, legal services, regional meetings, and an annual convention of several days' duration.

The forces behind this coöperative movement are not obscure. In almost every instance, leagues arose as a direct result of the urbanization movement so adequately described by C. A. Dykstra, president of the University of Wisconsin and formerly city manager of Cincinnati: "The growing importance of American cities is indicated not only in our population figures but in the number of units concerned. Five cities mean home to more than fourteen million souls. Furthermore, half the nation's population lives either in or in the shadow of cities of 100,000 or over. Since 1790, this city family has grown to more than 300 times the number of urbanites that President Washington counted, while the rural folk have increased less than 15 times. In 1870, 52.8 per cent of American workers were gainfully employed in agriculture; by 1930, this percentage had dropped to 21.3. It should be apparent, then, that our straggling rural frontier settlement has come to be a full-grown urban industrial society. Moreover, it did this within one century, not slowly and with gradual accommodation as did the urban centers of Western Europe."

Urban government was not prepared for such rapid changes. State legislatures, with rural backgrounds and outlooks, were unwilling or

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unable to recognize the urbanization movement going on under their very eyes. Appeals from individual municipal officials for broader powers met with consistent disapproval on the part of the state legislators. Nor was this disapproval entirely unreasonable, since this phenomenal urban growth had resulted, among other things, in the creation of widespread corruption in municipal politics. Under such circumstances, a grant of broader powers might well have been put to disastrous uses. Equally embarrassing to the official has been the steady increase in technological complexity of local government operations. Municipal officials, therefore, faced with an ever-increasing number of urbanites demanding more and more community services yet objecting strongly to any appreciable increase in local taxes, and handicapped at every turn by unsympathetic state regulation, turned for aid to other members of their profession.

From such a combination of circumstances arose the Indiana Municipal League founded in 1891. Of significance is the fact that the principles of coöperation as laid down by this first league have characterized all subsequent organizations. Four more leagues were organized prior to 1900. In 1910, the total stood at nine. Today, as stated, it is 40. The eight states not included in this total either lack state authority to pay municipal funds into such organizations or contain relatively small urban populations.

Support is provided by each municipality in the form of dues and/or service charges assessed annually on a basis of population. This charge varies from $2.50 for municipalities of a few hundred population in some states to $1,800 for large cities in other states. The *municipality* rather than the individual *official*, is the league member. The league, although supported by funds paid officially by municipalities in their corporate capacities, is unofficial in operation. It merely provides means whereby municipal officials may bring their collective needs to the attention of their legislature and inform themselves as to current practices in the ever more complex field of municipal administration.

League activities have been guided by a common principle to all cooperative movements: "Perform those services which one member, working independently, cannot perform for himself and which no other agency is performing satisfactorily." Officials coöperate in combatting many difficulties: lack of knowledge on the part of the official concerning most effective methods of public administration; lack of knowledge on the part of both legislator and private citizen concerning the problems of local government; tendency on the part of certain interests to overcharge the public for services and goods rendered, or failure to provide such services in the first place; normal isolation of the individual official from other persons engaged in the same line of work.

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The legislative problem is of prime importance, since enabling state legislation is necessary at so many points. As more satisfactory enabling legislation is obtained, the nature of legislative activity changes from policy-making legislation to administrative legislation—from home rule bills, for instance, to traffic control bills. The change, therefore, requires more and more that the league, either on its own initiative or at the request of legislators, present accurate facts relating to the administration of urban business, the while being compelled to pay less attention to securing further broad enabling powers from the state.

A league seldom takes action upon a given issue without virtually unanimous support from its membership, thus forestalling many an ill-advised resolution and legislative policy. The general idea which the league wishes to convey to the legislator is that it presents reliable information concerning a given situation, that information being in the form of official practice, official sentiment, or both. In pursuance of this policy, much attention is given to the collection of reliable information, which then is frequently published in report form and distributed to all persons concerned.

Central or regional legislative meetings are usually held to familiarize the official with the problems before the legislature. Legislator and municipal officials are often brought together at the same meeting in order that each may appreciate the point of view of the other. League bulletins keep officials posted throughout the session concerning progress of pertinent bills. Speaking generally, the extent to which officials will force their desires upon the attention of the legislator varies from state to state. Usually, however, the policy is to bring accurate information to the attention of the legislator, with no effort made to resort to pressure tactics so common to "special interests."

A second important league activity is the information service. This service receives more and more emphasis as a league develops, and is increasing in importance in all leagues from year to year because of the constantly growing complexity of public business. Not only are cities growing in size, thus requiring more complex administrative organization, but the technological advances are such that the official of today must be far more than an "officer of the law." He has become a public business man and administrator shouldered with the responsibility of providing essential community services. Furthermore, it is his obligation not only to carry out the instructions of his citizens but to recommend to them more effective courses of action. Because of the unique bird's-eye-view nature of his position, he is best able to make these recommendations. Social trends, hidden from the private citizen, are revealed, too, in varying degrees of focus to the public business man. Should he be unable to clear up a hazy focus in his territory, he is at liberty to compare

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notes with others of his profession through his municipal league. Many types of information service are provided: direct answer to inquiries; the automatic distribution of current information in periodicals (magazine or bulletin) or in special report; the organization of training schools.

Common to all leagues is the inquiry service whereby individual questions from officials are answered personally. Such items of correspondence, along with newspaper clippings, pamphlets, ordinances, etc., eventually build up into vitally important collections of up-to-date administrative data. Supplementing these collections are pamphlets, reports, and bulletins prepared by other leagues or organizations, as well as reports and bulletins issued by the home league. By reference to this collection, a given league is able either to answer a given inquiry directly, send away for further information, or at least refer the inquirer to other municipal officials who have had special experience along the line of inquiry.

Nineteen leagues have monthly magazines, distributed among their members as part of the regular service. Several other leagues accomplish somewhat the same purpose with weekly mimeographed bulletins, with the remaining few maintaining contact with their members by the use of occasional news letters. The primary purpose of the publication in each instance is to keep the official in touch with recent developments in his field of work. Editorial content is in no case restricted to home state news.

Regional meetings and personal visits of a field consultant provide highly effective means of answering the varied questions so constantly before the municipal official. The outstanding benefit of such meetings is the opportunity offered for personal discussion. Through such personal service alone can a real understanding and a workable solution of many problems be achieved.

The past five years have witnessed an encouraging increase in the number of in-service training schools for local officials. New York and Virginia pioneered in this activity with police and fire regional schools. Assessors, building inspectors, food inspectors, milk inspectors, finance officers, public works officers, and many others are in such training schools. The attendance during 1936 was approximately 14,000. National recognition of the need for such training has finally come with the passage of the George-Deen Act, under the provisions of which federal funds will be available for public service training.

All these activities would be impossible were it not for the coöperation provided by the individual officials. Although original organization of a league calls for considerable priming, the point is rapidly reached at which officials fully realize the benefits to be derived from such sharing of experiences and opinions. The public business man, in his determina-

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tion to improve his work by taking advantage of the successes and the mistakes of others, finds himself in a unique situation. While the business man in private, many times competitive, enterprise must guard his "trade secrets," the public official, gaining nothing from such concealment, has every reason to broadcast the results of his experimentation. With justifiable pride, he records the details and the "secrets" of operation of his corporation. This record is then at the disposal of any other official desiring to make use of it. As a result, leagues have been able to gather detailed accounts of methods used by different municipalities. Each league, therefore, has been able to set itself up as an authority on municipal administrative practices within its state.

Special services have been rendered where cities did not get satisfactory work done effectively. Some have merchandized certain municipal supplies; some provide professional ordinance revision and accounting services. The coöperative purchasing service conducted by a number of leagues has been most successful. This service arose as a direct challenge to prices being charged by manufacturers of fire hose. By pooling orders from a number of members and setting up minimum specifications, the league was able to halve the prices previously paid. By 1935, this service received such approval from members that it was extended to cover such other commodities as fire department accessories, street-name signs, traffic paint, water meters, and grader blades.

The approach to the accounting, ordinance revision, and debt revision problems is much the same as the above. The Kansas league set up model accounting forms and added to its staff several experts in the accounting field. Gradually, as an ever greater number of municipalities took advantage of the permanent benefits of this service, league activity tapered off. Finally, in anticipation of state participation along this line, the league service was dropped entirely. A similar service is now being performed by a state bureau.

Where effective ordinance and debt revision service is lacking, leagues will frequently either issue a list of approved professionals to handle this work or they will add to their staff a full-time lawyer or accountant. Most of these services are rendered to individual muncipalities rather than to an entire membership, and are paid for by a special charge rather than the annual service charge.

After a number of leagues had been operating for some time, there was felt to be a need for a central office which would coördinate the policies and practices of the leagues in the various states. To meet this need, in 1924 the American Municipal Association was formed. It works through the leagues of municipalities in states where such are organized, and provides on a national scale many of the services which are provided by the leagues on a state basis, including the annual convention, a reference

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and informational service, and the publication of a periodical bulletin.

In addition to these activities, the Association carries on a number of a more special character. It maintains a Washington office, through which continuous attention is given to the course of federal legislation affecting municipalities. It prepares and circulates special reports and studies on important municipal questions. As official American member of the International Union of Local Authorities, it examines the practices of European cities and interprets them to the state leagues. In brief, it acts as a clearing house for information on all matters concerning the administration of our cities and villages.

In states, too, which have no leagues, special services are rendered by the Association. To municipalities needing consultative assistance, it supplies the regular league services direct from its Chicago headquarters. It also renders assistance to municipal officials in the creation of leagues in such states.

CLIFFORD W. HAM.

American Municipal Association.

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NEWS AND NOTES

PERSONAL AND MISCELLANEOUS

Compiled by the Managing Editor

During the past summer, Professor James W. Garner, of the University of Illinois, delivered addresses before the Congress of American Nations in Paris and the Royal Institute of International Affairs in London, and served as a delegate to the World Congress on the Relations of Church and State at Oxford.

Dr. Carl B. Swisher, author of well-known biographical studies of Justice Field and Chief Justice Taney, entered upon his duties in September as associate professor of political science at the Johns Hopkins University.

Professor Harold W. Stoke is on leave from the University of Nebraska for the year and during the period is with the Tennessee Valley Authority as supervisor of training in public administration.

Dr. George R. Sherrill, formerly of Clemson College, has been made head of a newly established department of government at the University of South Carolina. Dr. Sherrill is author of *Criminal Justice in North Carolina* and co-author of a recent biography of Clemson, the founder of Clemson College.

Professor John M. Pfiffner, of the University of Southern California, is on sabbatical leave during the present semester and is devoting his time to gathering materials, in Chicago and Washington, on research techniques in public administration.

Professor Roscoe G. Martin has resigned his position as professor of government at the University of Texas to accept appointment as head of the department of political science at the University of Alabama.

Dr. Stuart A. MacCorkle, assistant professor of government, has been appointed director of the Bureau of Municipal Research at the University of Texas.

Dr. Dean E. McHenry, formerly instructor in political science at Williams College, has been appointed assistant professor of political science at Pennsylvania State College.

Dr. Roger V. Shumate, formerly of the University of Pittsburgh, has accepted an associate professorship at the University of Nebraska.

At Duke University, Dr. R. Taylor Cole, who spent the past summer in research in Italy, has been promoted from assistant to associate professor of political science.

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Dr. Elwyn A. Mauck, whose graduate work was completed recently at Columbia University, has been appointed assistant professor of political science at the University of North Carolina.

Dr. J. Mark Jacobson, at one time an instructor in political science at the University of Wisconsin, has been appointed to the legal division of the National Labor Relations Board and is connected with the review staff at the Washington office.

Professor Warner Moss, formerly of New York University, has been appointed head of the department of political science at the College of William and Mary.

During the first week in October, Professor Pitman B. Potter, of the Graduate Institute of International Studies in Geneva, delivered a series of lectures on current international affairs on the University of Illinois campus under the auspices of the department of political science.

Mr. Chitoshi Yanaga, who received his doctor's degree in political science at the University of California in 1934 and during the past two years has been studying at the Imperial University in Tokyo, has been appointed instructor in history and government at the University of California. During 1936–37, he held a fellowship from the Carnegie Endowment for International Peace.

New members of the political science staff at the University of Illinois include Dr. David O. Walter, formerly of Cornell University, as instructor; Dr. J. F. Isakoff, formerly an assistant at Illinois, as instructor; and Dr. C. B. Hagen, formerly of Smith College, as associate. The last-mentioned has taken over some of the work formerly in charge of Professor Charles S. Hyneman.

Mr. C. N. Fortenberry, who received a doctor's degree at the University of Illinois in June, is now instructor in political science at Edinburg College, Texas.

Mr. Asher N. Christensen, instructor in political science at the University of Minnesota, has been appointed adviser to foreign students at that University.

Dr. D. W. Brane has resigned his position at Western Reserve University in order to accept an appointment at Otterbein College.

Recent promotions at the State University of Iowa include: Drs. John E. Briggs and Ivan L. Pollock, from associate to full professor, and Dr. Ethan P. Allen, from instructor to assistant professor.

At the University of Pennsylvania, Professor Charles C. Rohlfing has

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been made chairman of the department of political science, in succession to the late Clyde L. King, and Dr. J. C. Phillips has been advanced to the rank of assistant professor. Four visiting professors are giving service during the year, as follows: Dr. Samuel Guy Inman, of Columbia University, a graduate and an undergraduate course on Latin American relations; Dr. William P. Maddox, of Princeton University, a graduate course in international politics; and Dr. Harley L. Lutz, of Princeton, in charge of graduate work in public finance during the first semester and Dr. Alfred G. Buehler, of the University of Vermont, during the second.

Under the direction of the School of Public Affairs and Social Work at Wayne University, Mr. Laurence Michemore, of the department of government, is in charge of the newly established in-service curriculum for public employees. The courses are being given in conjunction with the State Vocational Board. Employees will not receive college credit and are not required to meet the usual academic requirements for admission to courses.

The sesquicentennial of the Constitution of the United States was celebrated at Wellesley College on November 15–17 by means of a series of lectures by Professor Thomas Reed Powell, of the Harvard Law School, who also led a number of round-table discussions.

The University of Minnesota began the second year of its graduate training program in public administration in September. Pre-service fellowships were awarded to the following: Lowell D Ashby, A.B., Hastings College (Nebraska), 1936, A.M., Nebraska, 1937; Charles T. Bigelow, B.B.A., Minnesota, 1937; Thomas J. Gentry, Jr., A.B., Arkansas, 1937; Julia J. Henderson, A.B., Illinois, 1936, A.M., 1937; Theodore R. Hupper, B.S., Colorado State, 1937. In-service fellowships were awarded to the following: Russell P. Andrews, A.B., Stanford, 1928, deputy director, N.Y.A. in Oregon; Edward G. Conroy, B.S. in E.E., Notre Dame, 1930, superintendent of police communications, San Antonio, Texas; Lloyd C. Kersey, A.B., Macalester College, 1927, A.M., Minnesota, 1937, parole agent, state board of parole in Minnesota; Gertrude R. Munsell, B.S. in P.A., Missouri, 1931, assistant director, division of employment, W.P.A. District Office, Rolla, Missouri.

By action of the board of regents, a Bureau of Governmental Research has recently been established at the University of California at Los Angeles for the purpose of making studies in the field of public administration. Special attention will be given to the governmental problems of the various Southern California communities. In addition to carrying on original studies, the bureau will assist in making available to graduate and senior students the best sources of current information concerning

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governmental affairs; and all facilities will likewise be available for use by local public officials. Professor Frank M. Stewart, chairman of the department of political science, will direct the activities of the newly created unit, assisted by a staff composed of Dr. George W. Bemis, research associate, and Miss Evelyn Huston, librarian.

Earlier in the year, Messrs. Doubleday, Doran and Company announced the winner of the First Theodore Roosevelt Memorial Award—Dean Alfange, a young Greek-American practicing attorney of New York City, whose study, *The Supreme Court and the National Will*, is a keen analysis of the relation of Supreme Court decisions to their economic, social, and political backgrounds. Honorable mention was given a manuscript by Professor W. E. Binkley, of Ohio Northern University, on *The Powers of the President: Problems of American Democracy*. Both books will be published shortly.

Dr. Robert Karl Reischauer, lecturer in the School of Public and International Affairs and instructor in the department of Oriental languages and literatures at Princeton University, died on August 14 of wounds sustained from the explosion of a bomb in front of the Palace Hotel on the Shanghai Bund. His writings include a doctoral dissertation on *Alien Land Tenure in Japan*, published in the "Transactions of the Asiatic Society of Japan," a two-volume chronology and guide to early Japanese history, published by the Princeton University Press, and articles in the *Harvard Journal of Asiatic Studies*. Dr. Reischauer was one of the best prepared, as well as one of the most promising, American students of Far Eastern politics and international affairs. Son of the Buddhist scholar, Dr. August K. Reischauer, he was born and received his elementary education in Japan, whither he returned for further study after graduation from Oberlin College and before receiving his doctor's degree at Harvard University in 1935. His death at the moment when sound scholarship on the Far East is most needed is an irreparable loss.

With its twelfth number—December, 1937—*Events* completes its first year of publication. This monthly review of world affairs was founded by Spencer Brodney, who had been editor of *Current History* until that magazine, in April, 1936, ceased to be a publication of the *New York Times*. In the belief that the recording and interpretation of events and developments throughout the world should be based on sound scholarship, the contributors to *Events* have been drawn almost entirely from the colleges and universities of the United States. One result of this editorial policy is that *Events* has been coming increasingly into use in the study and teaching of history and the social sciences.

The fifty-seventh annual meeting of the Academy of Political Science,

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held at the Hotel Astor, New York City, on November 10, was devoted to the general subject of expenditures of the national government. One session was given to the national budgets of Great Britain, France, and the United States, 1928–1937; a second, to the future of the federal budget; and at a dinner meeting aspects of the general subject were discussed by Senator Harry F. Byrd of Virginia and Secretary of the Treasury Henry Morgenthau.

The first Pan-American Congress of Municipalities will be held at Havana, Cuba, beginning next April 14. On the agenda appears a lengthy list of topics pertaining to municipal organization, municipal administration, public utilities, public works, transportation, public safety, and social problems, in addition to general subjects such as the importance of the municipality in the social evolution of the nations of America, sociological effects of modern municipal environment, population movement from rural to urban areas, and the relation of municipalities to central government. Correspondence concerning participation in the Congress should be addressed to Sr. Presidente de la Comisión Nacional Organizadora del Primer Congreso Panamericano de Municipios, Secretaria de Estado, La Habana, Cuba.

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Theory of the Democratic State. By Marie Collins Swabey. (Cambridge: Harvard University Press. 1937. Pp. 234.)

In this volume, the author has undertaken to state, in a form acceptable to logic and theory of knowledge in the present phase, the traditional assumptions and evaluations of political liberalism. These amount to what is called "intellectualism," sometimes in praise but more often nowadays in dispraise. Some values are alleged to be reasonable, and some types of human relations are held to be justifiable because they follow logically from such values; in particular, liberal political practices are held to be defensible in this way. Moreover, it is assumed that a reasonable arrangement is more likely to exist and to persist than an unreasonable one. All of these positions are controverted or denied by contemporary political theory, or are made but not avowed by writers who think that democracy is respectable though not defensible. Perhaps the most appealing quality of this volume is its frank avowal of the traditional intellectualist bias of liberalism. In practice, the book aims to deflect to liberalism some of the reverence still felt for science. In theory, it undertakes to show that an identical structure of rationality supports both science and democracy.

Specifically, the author argues that there is a "general kinship" between the methods and postulates of science and those of democracy; both have "their common source in the quantitative method" (p. 37), and "each seeks to obtain mastery over the external world by treating its objects numerically and as subject to determinations of magnitude" (p. 17). This estimate of democratic practice is defended by pointing to equal and universal suffrage, constituencies based on numbers, and representation of a kind that approximates statistical sampling.

The relation alleged to hold between science and democracy is literally kinship. The author does not hold that either grew by imitation of the other, nor will she admit that both resulted from the progress of the mechanic arts. Her general philosophical position, if I grasp it, is a modernized Kantianism: the mind is supposed to have a kind of rational structure which provides the schemata of what is reasonable in every subject-matter. These schemata are postulates or working hypotheses rather than self-evident principles, but they are definitely principles of logical consistency and they supply the keys to any validity, whether of science or practice. This position is developed most clearly on its negative side, in her rejection of all forms of dialectical logic arising from Hegelianism. This is the essence of her criticism of both communism and fascism: they violate the intellectual integrity of a strict logical consistency.

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This diagnosis of intellectual shiftiness in dialectic, whether of Hegel or of Marx, appears to me to be substantially sound. Whether it implies a revised form of Kantianism is another question. There seems little reason to think that any formal logic will ever again attempt to shoulder the whole load of the sciences as they were customarily formulated, and still less reason to think that it will shoulder also a system of political justice. At present, it looks rather as if both logic and science were finding out how little there was in the customary formulation that was necessary. Formal consistency is extraordinarily adaptable; if there are "queer" geometries, or even queer logics, there ought to be the possibility of political and ethical systems as queer as anyone wishes, without any violation of logical consistency. Even if it had always been true that "progress and freedom . . . are regulative notions implied in every political theory" (p. 148), it might still be true that this need not be so. The truth seems to be that in politics and ethics one can postulate what values one chooses; consistency will then determine what follows, but it cannot either rule out or substantiate the postulate.

GEORGE H. SABINE.

Cornell University.

The Origin and Nature of Constitutional Government. By HUGH MCDOWALL CLOKIE. (London: George G. Harrap and Company. 1936. Pp. 156.)

When the future arrives and hindsight is in a position to corroborate or to ridicule foresight, it is at least possible that the position will be vindicated of contemporary students of political science who, while attempting sympathetic understanding of the chaotic world of government, refuse to take the plunge into complete relativity of judgment, and who hold fast to the belief that the most suitable norms are still those which have been developed, and are being developed, through the evolution of democracy, constitutional government, and the parliamentary system. Such a possibility, which to some may appear even a probability, requires logically, not the abandonment of the older studies, but rather a continuous reëxamination of government that is democratic, constitutional, and parliamentary, and of the principles involved. On this score, Professor Clokie's little book may be warmly commended and recommended.

As the title of this work indicates, its contents are partly historical and partly analytical. Of its four chapters, two—one on "Parliamentary Origins" and the other on "The Evolution of the Cabinet System"—are concerned with *origin*. They are, thus, in a sense introductory. They are justified by the author as an attempt to correct certain popular errors, and are denominated in the publisher's blurb "a slight excursion into English constitutional history." Some readers, doubtless, will scarcely consider "slight" an introductory excursion that comprises

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more than half of the whole volume. At the same time, the interest and importance of the chapters can hardly be lessened by doubts concerning proportion. Any discriminating treatment of the constitutional history of England ought to be guaranteed the sympathetic attention of serious students of government. The third chapter, the chapter primarily devoted to *nature*, deals with constitutionalism. It contains the essence of the essay. The analysis is forceful, the insight acute, and the conclusions arresting and provocative. A fourth and last chapter is concerned with the spread of constitutional government.

The whole of Professor Clokie's short work is announced by him as an introduction. Hence, interesting as it is in its own right, it possesses the further interest of two promises made. The preface announces a work on the theory and practice of parliamentary government in the leading countries, and a footnote a comprehensive volume on the organization and practices of English political parties. This is important news.

R. K. Gooch.

University of Virginia.

Lawlessness, Law, and Sanction. By Miriam Theresa Rooney. (Washington: The Catholic University of America. 1937. Pp. 176.)

The main thesis of this dissertation in philosophy is "that the revolt against Christian unity, the eventual rejection of all religion, and the rise of erratic philosophies consequent upon the denial of the authority of God, caused the decline in the strength of the sanction of law, which has resulted in the violence, injustice, and lawlessness that afflict us."

The "erratic" philosophies mentioned are the antecedents reflected in Bentham's, Maine's, and Holmes' emphasis on the element of force in legal sanction. In criticizing their conceptions of sanction and the effect which she ascribes to them, Miss Rooney—except for a few incidental references to methodological errors—evaluates the assumptions underlying them in the light of her own preconceptions. Her presuppositions are the well-known affirmations of the Scholastic writers concerning the nature of man and of the universe—allegations of facts the truth of which they could not verify empirically and therefore tried to excogitate by logical reasoning.

Asserting that individual "responsibility is the foundation upon which the sanction of law is based," the author attributes the breakdown of law observance to the neglect of character education. The "erratic" philosophies and behavioristic psychology, owing to their denial of a free will to the individual, are jointly held responsible for the tendency to minimize the individual's accountability for conduct and for the imposition of the burden of controlling conduct on the state, a function which the state is not warranted to assume and which it is unable to perform effectively.

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This "historical study" abounds in general statements that no careful historian would make without adducing evidence. We are told that "all history since [the thirteenth century] has recorded a decline in law observance," that "our social order is disintegrating," and that crime is "rampant," owing to an "atrophy of moral fiber." No evidence is cited in support of these contentions, unless the references to the fact that Bracton and St. Thomas Aquinas brought forth their conceptions of sanction in the thirteenth century and to the subsequent changes which the concept underwent are to be regarded as such.

In view of what is known about the physical and social causes of crime, Miss Rooney's notion of the efficacy of character education—even if reinforced by punishment of law-breakers—seems exaggerated. Nevertheless, she writes with considerable self-assurance, as is indicated by her liberal use of such terms and phrases as "specious," "erratic," "philosophical inadequacies," and "deliberate ignorance of historical and philosophic truths," when referring to systems of thought other than her own.

HENRY JANZEN.

Hamilton College.

Joseph De Maistre and Giambattista Vico. By ELIO GIANTURCO (New York: Columbia University Press. 1937. Pp. ix, 240.)

The title of this doctoral dissertation, and its subtitle, "Italian Roots of De Maistre's Political Culture," seem something of misnomers. The work is primarily a monograph on De Maistre's political and cultural thought, although there are many incidental references to the ideas of preceding thinkers which influenced him and frequent citations of passages from the works of Vico and others, parallel or analogous to ones occurring in De Maistre himself. Beyond demonstrating that many of Vico's ideas, as well as ones deriving from Aristotle, Tacitus, Cicero, Livy, Machiavelli, and Montesquieu, lay ready to hand for De Maistre to use in his romantic and traditionalistic revolt against eighteenth-century rationalism, the author fails to show any direct literary parenthood of Vico over De Maistre. No doubt he read Vico carefully, as he did a wide range of classical theorists. Probably, also, Vico's doctrines constituted the core of that body of thought which may be regarded as generally seminal for the conservative reaction to radical intellectualism which ripened in the post-Revolutionary period.

The book suffers badly from a ponderous style, an excess of erudition, many obscure passages and interpretations, and numerous ambiguous or unfathomable hiatuses in the thought-transition between paragraphs. Despite these deficiencies, it affords much valuable information on, and some interesting interpretations of, De Maistre's political, social, religious, and philological doctrines for any one patient enough to digest it.

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Thus, many may be surprised to learn that De Maistre, although championing absolute sovereignty in a single monarch and opposing Montesquieu's theory of a mechanical separation of powers, interpreted these concepts of sovereignty and monarchy, at least at times, in a symbolical sense to mean the necessary prerequisite to formal juristic unity, instead of in the sense of despotic and arbitrary power. Magistrates, not kings, are to judge in civil cases, and the king should rule temperately according to the sacred constitutional and customary laws (pp. 10–19). Nor is his undoubted belief in the institution of the papacy and in papal infallibility perhaps so much an advocacy of an Italian or "ultramontane" Pope as of a papacy centering in France and propagating French values (p. 224).

On the whole, however, Gianturco does not seem to modify materially conclusions already reached by other commentators as to the metaphysical, theocratic, and mystical bases of De Maistre's political theory; its uncompromising traditionalism, conservatism, and nationalism; its emphasis on sentiment, instinct, "myths," and "common reason" as against *a priori* and conscious intellectualism; or its espousal (despite the attack on Voltaire's *a priorism*) of mystical and intuitive "laws of history."

Special chapters are devoted to De Maistre's political morphology or theory of forms of government, to his doctrine of constitutions, to his ideas on nation and religion, to a lengthy and (to the reviewer) opaque discussion of his philological doctrines, and to a summarizing of his achievements. The bibliography is exhaustive.

MAX A. SHEPARD.

Cornell University.

The Power to Govern. BY WALTON H. HAMILTON AND DOUGLASS ADAIR. (New York: W. W. Norton and Company. 1937. Pp. 194.)

This is a polemical work of an unusually gracious variety. The authors, like some others, were considerably irked by those decisions of the Supreme Court which upset the N.I.R.A., "the little N.I.R.A.," and the A.A.A. on the basis of a sharp distinction between "commerce" and "production," and they address themselves to the task of demonstrating the historical unsoundness of this distinction. Their thesis is indicated in the following passage concerning the meaning of the word "commerce" in 1787 or thereabouts:

"It is all but impossible in our own age to sense fully its eighteenth-century meaning. The Eighteenth Century did not separate by artificial lines aspects of a culture which are inseparable. It had no lexicon of legalisms extracted from the law reports in which judicial usage lies in a world apart from the ordinary affairs of life. Commerce was then more than we imply now by business or industry. It was a name for the economic order, the domain of political economy, the realm of a comprehensive public

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policy. It is a word which makes trades, activities, and interests an instrument in the culture of a people. If trust was to be reposed in parchment, it was the only word which could catch up into a single comprehensive term all activities directly affecting the wealth of the nation."

Our authors first resort to eighteenth-century lexicons—a phase of their argument which falls considerably short of their purpose. The vast proportion of the definitions and phrases culled from such sources regard "commerce" as *trade, traffic, dealing, intercourse;* and while some of them do seem to merge manufacture, or the eighteenth-century equivalent, with traffic as a sort of *continuum*—a mode of disposing of the national superfluity, many others do not; and all clearly regard "agriculture" as designating an activity or interest apart from either trade or manufacture.

It is when, in Chapters IV and V, Messrs. Hamilton and Adair proceed to project their argument against the political outlook of the age and of the men who framed the Constitution that it becomes most persuasive. Set in this context, the power to "regulate commerce" assumes the enlarged connotation for which they contend. The framers were Mercantilists almost to a man; they believed government capable of giving the economic activities of society direction and of making them contribute to national grandeur. Also—though the point is not stressed by our authors—they found in this relationship between governmental policy and private enterprise a decided prop to aristocracy. Furthermore, they were "high sovereignty" men—when government possessed a power, it was entitled to use it at its own discretion; it need not wait on judicial theorizing. And in this last connection, the reviewer finds it necessary to demur to the formulation by Messrs. Hamilton and Adair of the issue raised by the decisions which they deplore. As they phrase it, "in the word 'commerce' the whole issue lies" (p. 14). Not so—it lies also in the word "regulate." Indeed, it would seem that the Court has been rather tenderer of the *noun* than it has of the *verb* in this instance, as in some others.

And thus much for the strictly historical issue. It is not, however, our authors' contention that judicial construction of the "commerce" clause ought always to have proceeded from the Mercantilist point of view, or that this could reasonably have been expected. They say:

"As mercantilism passed, into the intellectual succession then came—along with the machine, the corporation, and business—another economic philosophy. In the articles of faith which is *laissez-faire*, business is more capable than the state to direct the activities of the people toward prosperity. The government is the villain in the piece, and the frontiers of Business Enterprise must be protected against its encroachments. Another route led to the general welfare. All through the Nineteenth Century this outlook upon affairs gained ground. . . . It had already permeated common sense, economic theory, and public policy. It would have been strange if it had not made its way into constitutional interpretation.

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It was borne along on the current of the age, and had behind it the dominant interest that sought to become vested. The supreme law of the land was not immune to an outlook on affairs which had already penetrated the infringing intellectual world."

Yet in this very fact, they suggest, lies assurance: "An instrument so yielding to insistent pressures is flexible enough to meet the democratic demands of the immediate future. The abiding text can again be furnished out with a more fitting glass."

How, then, is the Court to be persuaded to turn its eyes once more "from the margin back to the page"? "It may be," our authors answer, "that Legislature and Executive, exercising their constitutional powers, will contrive ways and means" for bringing this about; or "it may be that the gloss lies so thick that the power to govern must be written afresh in the language of today." All of which, of course, was written prior to the Wagner Act and Security Act decisions.

No one who pretends to the least interest in the Constitution and the problem of its interpretation should miss reading this volume. The task will prove an easy one, for the style is delightful and matches most gratifyingly the high quality of the thought. In eighteenth-century terminology, it is a "philosophic" work.

EDWARD S. CORWIN.

Princeton University.

State and National Power Over Commerce. BY F. D. G. RIBBLE. (New York: Columbia University Press. 1937. Pp. 266.)

This is a study, in twelve chapters, of the commerce power of the state and of the United States under the constitution. The book deals with the commerce power as that power has been subjected to judicial determination, and is not a study of the economic or sociological aspects of life that have affected these determinations. The method of the book is partly historical and partly analytical. The general outlines of the historical evolution of doctrines is carried on with more elaborateness than in several of the recent books upon the subject, and with somewhat less of the analytical treatment than is to be found in a book like that of Gavit. The book really adds nothing new to that which is known about the subject, but it does provide within a reasonable compass a clear statement of the doctrinal elements in the law and traces the shifts in doctrine from period to period and from situation to situation. On the whole, the author seems fairly content with the work of the Court, although one feels at times that he holds Marshall's doctrines in high esteem. Many of the present era find much of the nationalistic Marshall to their liking, even though Marshall probably would vote against the New Deal acts were he on the Court today.

The general thesis of the work is well set forth in the following quota-

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tion from the introduction: "Reference has been made to the fact that the early history of the commerce clause was written by the judiciary with but little help or hindrance from Congress. In this judicial period, a doctrinal basis for the division of power over commerce was sought first in the 'nature of the power over commerce.' Later, the 'nature of the power' was deemed too theoretical. With a desire to approach more closely to what had come to be regarded as the realities of the situation, the Court turned to the 'subjects of the power' over commerce as furnishing a guide. The new doctrine was itself subject to modification. And Congress by degrees became more active in commerce matters. Thus the 'will of Congress' was accepted as a vital factor in determining the scope of state power in the field of interstate commerce. This development did not, of course, allow Congress to define its own power under the commerce clause. But when the matter in question was deemed to be within the area of the congressional power, the Court began to invoke the 'will of Congress in determining what the states would be permitted to do. This will was found in the silence of Congress as in its voice. Its fictitious aspect is apparent. Into this idea of the 'will of Congress' as well as into the conception of 'burdens' on interstate commerce were fitted limitations on state power."

The author criticizes the Court vigorously for the use that is made of fictions and of phrases that becloud the issue. He feels that formulas and formalism have been both a tool of and a master of the justices. But when the appraisal is finally made, it is clear that he thinks that the Court has kept before it the central problem of commerce, as the author sees it, namely, the balancing of local against national interests, and that the Court has generally held the balance wisely.

The author has done his work carefully. The book is reliable. He has adorned it now and then with references to natural law, to jurisprudence, and to more general works of history, but the study for all of that is a case study. It is a good case study, but it still remains for someone to write about commerce in such a way that the details and specifics of political, economic, and commercial trends and practices show up in their relation to the decisions. This was not the task, however, which the author set for himself, and he must be held accountable for only that which he started out to do. He did that well.

OLIVER P. FIELD.

University of Minnesota.

Pressure Politics in New York. By BELLE ZELLER. (New York: Prentice Hall, Inc. 1937. Pp. ix, 310.)

Despite the recognized importance of lobbying, there are but few adequate analyses of group representation before legislative bodies. Miss

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Zeller's scholarly study of lobbying before the legislature of the wealthiest and most populous state in the Union is therefore especially welcome. The book contains not only chapters describing different types of organizations, but also a chapter analyzing techniques and another proposing reforms.

In New York, labor appears to have the most powerful lobby, probably because it can depend upon a large body of organized voters, can take an active part in campaigns, and can encourage its supporters to become members of associated lobbying organizations. Industry has suffered from the collapse of its allies in the Republican party and finds itself unable to muster a body of organized voters, but through the Economic Council business and employer groups have made a broad and skillful propaganda appeal to the great mass of unorganized voters. This propaganda activity has supplied a popular voice to supplement the pressures which business leaders can exert through their control of the economic structure. The farmers have brought together most of their lobbying activities in the New York State Conference Board of Farm Organizations, which uses the large farm vote as a lever in the cause of agriculture, thus bringing pressure to bear not only on the legislature but on the administration also. Too little space has been given to the religious denominations, a shortcoming made more obvious by the recent activities of the Roman Catholic Church in defeating birth control and child labor legislation. Some compensation for the omission is found in the excellence of the chapter on the lobbying of the State Charities Aid Association, and especially its conflicts with other organizations and the administrative officials. The author notes with regret the lack of a lobby protecting the interests of consumers. The chapter on lobbying techniques describes, among the most notable developments, a tendency for lobbies to enter into alliances, to appeal to individual legislators instead of the party leaders, and to arouse and organize voters to aid the lobby pressure.

The author says: "It is apparent, . . . that any attempt to solve the problem of the lobby and create a system in which the various pressure groups will exert an influence in proportion to their social usefulness necessitates not merely a better-drawn and more vigorously-enforced lobby law, and the extension and improvement of official research agencies, but also a thoroughgoing reorganization of both legislative structure and the procedure itself." She recommends the introduction of a small unicameral legislature in place of the present system, but it is surprising that she gives no consideration to the possible use of proportional representation, a scheme which would provide more direct representation for some of the groups she describes as engaged in lobbying. After all, lobbying is a problem of representation, and the reviewer cannot agree with the author's mystical notion of "selfish" lobbies pleading their causes before

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an "impartial" legislature representing the "public interest." It is only fair to say, however, that such views do not predominate in the book, which otherwise displays real insight into the legislative process.

WARNER MOSS.

College of William and Mary.

Integrity; The Life of George W. Norris. By RICHARD L. NEWBERGER AND STEPHEN B. KAHN. (New York: The Vanguard Press. 1937. Pp. x, 383.)

George W. Norris will be remembered as the author of the Twentieth Amendment to the federal Constitution and the leader in the fight to give Nebraska a unicameral legislature. He has been a consistent and persistent champion of the plain people. That championship particularly stands out in the realm of electric power. This book presents a complete picture of the statesman from Red Willow county, Nebraska. He is, as the authors claim, a great man, a man singularly honest, and a man who has contributed much to his generation and to the well-being of his country. However, the authors attempt to paint him as a too perfect man. He may be "the very perfect gentle knight" to President Roosevelt, but he is hardly that to some who have heard his tongue-lashings in the Senate. It apparently never occurs to the authors that a man who has never been to Europe, shuns social affairs in Washington, and never goes to church may be somewhat limited in his outlook. A senator who votes against accepting the Mellon art gift and who criticises Chief Justice Taft for going to Washington dinner parties is a narrow man. Great as Norris is, there is about him the provincialism of the prairies.

Then, the authors are continually ringing the changes with fulsome praise for Norris for his vote against our entry into the World War. Walter Lippman once spoke of the "sentimentality of peace." It runs all through this book. Many Americans believe they went to war to save their souls and that the democracies of France and England are standing guard today over the heritage of the race because of our military effort.

The evolution of Norris's ideas on the tariff and partisanship is well presented. But this very non-partisanship, which may be admirable in one man, might not do for the many. The chief criticism levelled against the new Nebraska legislature is the non-partisan idea which Norris worked into it. A. Mitchell Palmer, one of the Wilson leaders, is referred to (p. 188) as "Attorney-General in the Harding cabinet." The book is too much propaganda for a particular social and political philosophy. There are many quotations from The *Nation* and the *New Republic.* Apparently these magazines represent the angle of approach of the authors. Their only criticism of Norris is that he agrees to "the halting

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pace of the New Deal." The style is readable rather than distinguished.

PAUL M. CUNCANNON.

University of Michigan.

Recent Trends in Rural Planning. By WILLIAM E. COLE AND HUGH PRICE CROWE. (New York: Prentice-Hall, Inc. 1937. Pp. xv, 579.)

This book is intended as an attempt to describe efforts to "plan" with reference to a number of social, economic, and political problems found in rural areas. Whether what is being done or suggested in relation to these problems adds up to something like "planning" depends upon how that erstwhile fashionable term is defined. The authors offer several definitions, all having in common the element of comprehensive coördination of effort which is certainly essential to the idea of planning. If a definition containing this element is accepted, then it would follow that the means adopted for the reordering of rural life would have about them a certain unity and consistency not found in a planless society.

While the suggestions of experts and the experiments of reformers and administrators with regard to rural problems may well be of value to the magisterial mind which is one day to do our planning, they do not as yet strike us as constituting planning. About two-fifths of the book deals with planning with regard to such matters as our agricultural resources, land use, and land settlement, though there is interspersed considerable discussion of the planning of "human resources." Much of this part of the book may be accepted as a collection of data and opinion on a great variety of matters, human and otherwise, which will be very useful to students of rural life—farm income, "problem areas," local government costs, rural housing, population movements, farm tenancy, and so on. These matters are the raw material of planning rather than planning itself.

In the succeeding chapters (vii–xvi), the authors seem to have still further lost touch with their definitions of planning. These chapters deal with such matters as rural social welfare, juvenile delinquency, crime control and justice, public health, education, library planning, recreation, rural church planning, rural government, and rural electrification. Nearly all of these involve much more refractory material than that dealt with in the first part of the book, and the reader has the impression that he is reading a series of disjointed efforts to improve country life rather than about parts of a coördinated plan. What the authors have really done is to produce another manual in the field usually known as "rural sociology," and it is unfortunate that they have allowed the recent fashion about planning to influence their choice of title. Some may doubt whether "rural sociology," containing as it usually does such heterogeneous materials, is a legitimate subject for scholarly attention, but, assuming that it is, this

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book is one of the completest, as it is the latest, in that field. While it would have been improved by more attention to general ideas, the authors have shown great industry and considerable skill in assembling and presenting interesting and concrete materials from a vast variety of sources. This material is cited copiously in the footnotes and in the selected bibliographies at the ends of the chapters.

LANE W. LANCASTER.

University of Nebraska.

A Hundred Years of English Government. By K. B. SMELLIE (New York: The Macmillan Company. 1937. Pp. 468.)

A History of the English Coronation. By PERCY ERNST SCHRAMM. (Oxford: The Clarendon Press. 1937. Pp. xv, 283.)

The Magic of Monarchy. By KINGSLEY MARTIN. (New York: Alfred A. Knopf. 1937. Pp. 125.)

One of these books deals with British government as a whole during the last hundred years. The other two are concerned with the monarchy and the coronation, to which recent events have attracted attention. While each deals with some matters also referred to in the others, in the main they supplement each other in emphasizing different aspects of the British system.

Mr. Smellie's work on English government during the century from William IV to George VI illustrates the thesis that government in England is not static, but is constantly in process of change. He divides the century into three main periods: from 1832 to 1870, from 1870 to 1914, and since 1918, with a chapter on the war interregnum from 1914 to 1918. To each of the other periods he gives three chapters—one each on the state and society, government and parties, and the machinery of administration.

The first chapter in each section deals with social conditions and theories, the expanding functions of government, and imperial and international policies and problems. Even in the first period, the prevailing *laisser faire* principles were modified in practice; and internal and external forces continued to accelerate the growth of government services in the second, and still more during and since the World War. Mr. Smellie accepts the breakdown of *laisser faire* as inevitable, but neither advocates nor assumes the desirability of a completed socialistic policy.

In the chapters on government and parties, there are considered the reform bills and their results, the development of party organization, and changes in parliamentary procedure and in the importance of the cabinet. "Between 1832 and 1868 we have the transformation of the conflicting cliques within a governing class into the party organization of a democrat-

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ic state" (p. 52). "Since 1832 the English system of government has been transformed; the confused and conflicting powers of King, Lords, and Commons has been transformed into the menacing simplicity of a Cabinet dictatorship, mitigated by professional experts, organized interests, and electioneering propaganda" (p. 270). At the same time, "the innate conservatism of English political practice has been as mixed a blessing as the legal rigidity of the constitution of the United States" (p. 272).

Rules of parliamentary procedure, developed to defend the representative body against a powerful executive, have been altered so as to aid the ministry in the task of government (p. 76). Changes were made between 1832 and 1872; but the radical transformation came after the Reform Bill of 1867 (p. 967). But even now the time devoted to government legislation does not exceed half the sitting time of Parliament. The House of Commons has failed to focus public attention on important issues (p. 377). A majority, however determined, cannot pass with the ordinary procedure half the measures necessary to bring the law up to date.

At the same time, "there is a fundamental uncertainty in all the parties shared by all honest minds as to the policy to be followed. The Labour party does not really believe that the evils men do are due to the existence of private property; the Liberal party does not really think that Cobden has new worlds to conquer; and the Conservative party does not know what order it should patriotically defend" (p. 394).

Relatively more attention is given to the machinery of administration than in most works on English government. This includes some account of the development of certain departments, the system of financial control, the civil service, the judicial system, local government, delegated legislation, and administrative justice. Before 1914, the administrative machine of the county was becoming too tangled to provide the service national and social problems required. In 1918, the Haldane Committee proposed a comprehensive reorganization, which has been applied in a few fields; but pressing problems have led to further uncoördinated expedients, while the general principles of the Haldane report have been challenged in some quarters.

The expansion of government may be indicated broadly by the growth of the civil service, from 21,000 in 1832, to 53,000 in 1871, and to 434,000 in 1929. Reform of this service from the dangers of patronage was begun in 1855, and placed on a firmer foundation by the introduction of open competitive examinations in 1870, since gradually extended. Of special importance is the position of the higher posts in the administrative class, recruited from university graduates. In the eighteenth century, the permanent officials had been little more than clerks of their political chiefs. But with the change in the scale and nature of government "the permanent head of a government department must himself be a states-

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man in everything except ability to lead a party or inspire an electorate, or sway the House of Commons" (p. 425). Recognition of their importance is shown by Mr. Smellie's frequent reference to such officials, though the tradition of anonymity makes it difficult to secure full information on their influence. As this becomes more generally known, the problem will arise as to the effect of this knowledge on their position.

Some typographical and other minor errors have been noted; and the details of a confused and unsystematic development may discourage some readers. But Mr. Smellie's work will be of much service to those interested in the changing purposes and processes of English government.

Professor Schramm's *History of the English Coronation* is the work of a German scholar who for many years has been studying the history of coronations in Western Europe, and who has previously published a number of essays on coronations in various countries. Part I deals with the general history of coronation rites among the Teutons and Celts, and the development of the English service from the time of the Anglo-Saxons. He takes the position that: "The factors that determined the consecration of an Anglo-Saxon King were Teutonic custom, Christianity and the idea of Kingship prevalent under the Carolingian and Saxon emperors." Incidentally, however, he notes that: "Teutonic princes . . . placed the Imperial purple on their shoulders, and felt themselves entitled . . . to claim the insignia of the Roman imperator—the diadem, and then the sceptre and the orb." But he does not refer to the coronation of the later Roman emperors by the Patriarch of Constantinople, from the middle of the fifth century. Of Celtic influence he holds there is virtually no trace worth mentioning, and that this may be left entirely out of consideration. Yet he notes that Scotland borrowed from the Irish the custom of making the monarch sit or stand upon a stone. But he does not mention the "stone of destiny," brought from Ireland, on which the early Scottish kings were crowned, and the legend that it was the stone on which Jacob slept at Bethel, nor the fact that this stone, taken to England by Edward I, forms part of King Edward's chair, on which English and British kings have been enthroned to the present time.

Part II deals with the constitutional theory of the royal power, as illustrated by the rite of anointing, by the elective element, surviving in the proclamation of a new king and his acclamation and recognition at the time of coronation, and by the history of the coronation oath—the germ of Magna Carta and constitutional monarchy. In all of these there is a mingling of native and foreign elements; but the final result is "a peculiar, unique, and consequently specifically English rite."

In Professor Schramm's history of the coronation ceremony, there is no discussion of later developments in the position of the British monarch. Mr. Smellie refers to specific actions by Queen Victoria, Edward VII, and George V; but he considers that: "The Monarchy has become a

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device by which the emotional needs of the public mind can be met. . . . Queen Victoria's personal power exacted an incredible expenditure of time and temper by her ministers. . . . During the reign of Edward VII, most of the prerogatives in which he claimed a personal discretion . . . were challenged and surrendered."

The Magic of Monarchy, by Kingsley Martin, editor of the *New Statesman and Nation*, undertakes in 125 pages to explain the abdication of Edward VIII, in the light of the changing conception of the kingship. Under Victoria, "the prestige of the Monarchy increased when its power declined." "We do not know enough yet to judge what actual influence on events Edward VII and George V had, but we know that it was not of comparable importance to that exercised by Queen Victoria." At the same time, "Edward VII was successful in sustaining the popularity of the Monarchy . . . ; and . . . George V actually enhanced it. The effect by the end of George V's life was . . . to change the rational attitude towards Monarchy . . . into an uncritical adoration."

The abdication of Edward VIII "was the surprising result of a combination of circumstances." None of the simple explanations is true, but there is a fragment of truth in all of them. Mr. Martin considers in turn the attitude of the king, the prime minister, the archbishop of Canterbury, the members of Parliament, and public opinion as expressed in the press and elsewhere. At one stage "the growth of a King's party was a real danger." In the end, abdication was generally expected and accepted. One may suspect that the full story has not yet been told. But Mr. Martin's conclusion seems warranted: "The rivets of the halo have loosened on the Crown. If we want to keep the Crown, let us finally dispense with the halo."

JOHN A. FAIRLIE.

University of Illinois.

Public Enterprise. EDITED BY WILLIAM A. ROBSON. (Chicago: University of Chicago Press: 1937. Pp. 416.)

This volume is a symposium of nine sections, with a preface and a summary of conclusions by the editor. The public agencies covered are the Port of London Authority, the Forestry Commission, the British Broadcasting Corporation, the Central Electricity Board, the London Transport Board, the Coal Mines Reorganization Commission, the Agricultural Marketing Boards, and the Post Office. To the chapters on these subjects is added one on the Organization of the Coöperative Movement. The inclusion of this private organization is explained by the editor: the consumers' coöperative movement is "the other great alternative method of producing and distributing goods and services without profit to the producers."

Finding adequate justification in the tendency of things, Mr. Robson

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declares flatly: "The rise of the public service board as a new type of concern for operating, organizing, or regulating industrial activities is the most important innovation in political organization and constitutional practice which has taken place in this country during the past twenty years. . . . Suddenly they [boards] have become all the rage. Politicians of every creed, when confronted by an industry or social service which is giving trouble or failing to operate efficiently, almost invariably propose the establishment of an independent public board. . . . It may be recalled that the Bill setting up the London Passenger Transport Board was introduced into Parliament by a Labour Minister, continued by his Liberal successor in office, and piloted through its final stages by a Conservative Minister of Transport." When it is remembered that the public corporation has appeared in widely different places and amid varied circumstances in Western civilization, this brief summation has "a world of meaning" for economists and political scientists who reject the categorical imperative that we must have our whiskey straight or not at all.

The several chapters are done competently and in the scholarly tradition, if with a certain tenderness for the Fabian conception of things. The text is mainly descriptive and contains invaluable information on these agencies and the policies involved in their operation. Students of government and economy everywhere will be grateful to the authors for their clear and orderly exposition of British theory and practice in respect of public enterprises.

Americans, in particular, may draw from these pages fundamental data for comparison with similar undertakings in the United States. For instance, the milk commissioner in Connecticut and the Secretary of Agriculture in Washington can here discover their own problems and troubles, with variations, as handled by British agricultural marketing boards. Again, those Americans who are seeking some program for coöperation between private electrical utilities and utilities publicly owned can now find out "how the British do it." The present reviewer is a little bit disappointed because the volume does not give more precise information relative to the effect of the British grid on electrical rates for consumers and on the development of public ownership and operation. But that is a private grievance of no immediate pertinence. Again, politicians in New York City wrestling with the problem of transit unification may learn lessons from the history of the London Transport Board, including methods for incorporating a lot of "water" in the capitalization. Chairman McNinch, now engaged in trying to untangle the radio snarl, may find light on America's radio troubles in the experience of the British Broadcasting Corporation. And so on.

No doubt many politicians and students will continue to talk glibly and volubly about the absolute opposition between public and private, gov-

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ernment and economy, planning and no planning, the individual and society, collectivism and individualism— absolutes that do not exist outside of imaginations. But this volume will be helpful to everyone who tries to distinguish between throbbing and knowing and fain would look upon the tendencies of things with clear eyes.

CHARLES A. BEARD.

New Milford, Conn.

The Empire in the World; A Study in Leadership and Reconstruction. EDITED BY E. THOMAS COOK. (London: Oxford University Press. 1937. Pp. x, 323.)

This volume is about as intelligently-written and serviceable a conspectus of the British Commonwealth and its problems today as can be found in any work of comparable brevity. It is a symposium, under the editorship of E. Thomas Cook, assistant editor of the *Empire Review*. The first and last sections of the book, dealing with the foreign relations and policies of the Empire, were contributed by Sir Arthur Willert, formerly chief of the press department of the British Foreign Office. The second part, surveying the constitutional developments of recent years, was written by B. K. Long, until recently editor of the South African *Cape Times*. The section on the economic problems of the Empire was contributed by H. V. Hodson, editor of the *Round Table*. Notwithstanding this diversity of authorship, unity has been secured, partly through careful planning, mainly from the basic community of viewpoint of the writers—in general, the viewpoint of the *Round Table*. The attitude is successor to that of the Imperial Federationists of a generation ago. It insists that the British Commonwealth is a community of interdependent nations, with common problems calling for discussion and settlement, and contrasts markedly with the various nationalist viewpoints, which are essentially isolationist and look no further than the boundaries of the particular nation concerned. An appreciation of this antithesis is essential in approaching any discussion of the British Commonwealth, and will explain diverse estimates of the importance of the present volume.

In this analysis of the contemporary international scene, Sir Arthur Willert argues that all the British "nations" have a vital and common interest in developments, particularly in view of the growth of anti-democratic movements, and the fact that the nations of the Commonwealth are committed to democracy as the essential basis of their organization and relationships. This latter point seems worthy of his emphasis, when we recall that approximately one-ninth of the world's nation-states today are British. The arrangement of Mr. Long's discussion of post-war constitutional evolution is chronological, although the chapter headings are topical, indicating the salient developments as they occur. This is an

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excellent brief survey, with no space wasted on sentiment—nor, it may be added, any inkling of the background of opportunism and hokum (particularly in Canada) from which many of the leading precedents of this period emerged. The conflicting attitudes in the Dominions upon constitutional issues, and the consequent variations in action upon such matters as the Statute of Westminster and the recent abdication act, are explained succinctly. The clear exposition, in the final chapter, of Mr. Balfour's oft-ridiculed distinction between "status" and "stature" should afford solace to inhabitants of the mother-country. Doubt may well be expressed, however, as to whether (since 1924) the king has the constitutional right to refuse a dissolution requested by a premier (p. 109), or whether the demands of Dominion autonomy, and the perennial effort to reconcile Austinian theory with the facts of Commonwealth relationships, can be solved by amendment of the Statute of Westminster (p. 90). Could the latter problem be aided by taking the view that what was in its inception an act of a sovereign Imperial legislature (Keith) became transmuted, in its journey among the Dominion parliaments, into a multi-lateral treaty among equal states?

In the third section, on "Economics of the Empire," Mr. Hodson attacks what has been the most persistent of all imperial problems during the past forty years. Although the international scene has changed markedly, the basic problems are as Joseph Chamberlain found them—the reconciliation of British foreign with intra-imperial trade interests, and of Dominion economic nationalism with an imperial economic outlook. The contemporary argument briefly is: "It is plainly preferable economically that the unit of greater self-sufficiency should be as wide as possible. The British Commonwealth will be better off if the greater self-sufficiency that is forced upon it is Commonwealth-wide than if it is restricted to the borders of each member-nation" (p. 247). This implies a common plan among the British nations, based on "the combination of economic specialization with the maintenance of liberal conditions of Empire trade." The crucial obstacle, however, is indicated by the author in his expression of regret that Imperial Conferences are mere occasions for tariff bargaining on a nationalistic basis.

The final section of the book, by Sir Arthur Willert, dealing with Commonwealth foreign policy, includes a succinct analysis of post-war efforts to attain international stability, in which the rôle of American policy in "the sequence of events which link the Abyssinian fiasco with the refusal of the United States to enter the League" is at least indicated. The situation of the British nations and the conflicting schools of thought which have robbed British foreign policy of consistency and vigor are analyzed. The argument is for collective action by the democracies in international affairs, and against a British policy of drift which threatens

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greater ultimate danger than that which may be postponed at a given moment. A noteworthy feature is the emphasis upon the need for better support for British news service in the face of organized, subsidized foreign competition. While a government-controlled news agency is deprecated, aid such as through cheaper wireless rates is urged for Reuter or a similar agency.

The aim of this book is to promote an awareness of the need for greater coöperation in policy and action among the British nations. The method is to survey the facts and indicate the salient developments with their evident conclusions. Readers in Britain and the Dominions will doubtless be stimulated or left cold in accordance with their predispositions. To others, the volume affords a most useful exposition of the relations and problems of, in many respects, the most instructive group of nations in the world today.

A. GORDON DEWEY.

Brooklyn College.

Regeringssättet i den Schweiziska Demokratien. By ELIS HÅSTAD. (Skrifter utgivna av Statsvetenskapliga Föreningen i Uppsala. VI. 1936. Pp. xli, 735.)

The Constitutions of the United States and Switzerland Historically Analyzed and Compared. By M. ANN JOACHIM O. P. (Fribourg. 1936. Pp. vii, 180.)

In the extensive bibliography appended to his *Constitutional Government and Politics*, Professor C. J. Friedrich refers to the careful Swedish analysis of the Swiss referendum made by Professor Axel Brusewitz of Uppsala University. Published by the Swedish department of justice in 1923, this treatise is perhaps as thoughtful a presentation of the subject of direct popular action within a constitutional framework as has appeared anywhere. It is unfortunate that the fact that it is available only in a little known language has prevented wider recognition of the work.

The same must be said of another study of the government of Switzerland presented recently as a doctoral dissertation at Uppsala by one of the students of Professor Brusewitz, Elis Håstad. The result of three years of research at Bern, Håstad's book on the Swiss executive is by far the most able and comprehensive account of the Federal Council and government by commission that has been published. Its 692 pages of text give a full and interesting picture of Switzerland's unique plural executive.

Docent Håstad's book is divided into four main parts. In a brief section of 31 pages, the author traces the historical background of the *Bundesrat* and its constitution in 1848. Part two (32–318) outlines the historical development of the Federal Council from that date to the close of 1935.

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Elections, personalities, and party battles are discussed in detail, and the contemporary press, memoirs, and parliamentary debates are cited in profusion. An extensive panorama of the Swiss political scene is here presented. In the third part (319–541), the powers of the executive are reviewed, its inner organization and actual operation discussed, and its composition further treated. The last section (543–692) is devoted to the relationship between the executive and the legislature, the referendum, the political parties, and other questions, including proposals for reform. The treatment as a whole resembles that of American and British scholars more than do the heavier, legalistic approach of many Swedish and German academicians. Håstad's journalistic experience has stood him in good stead, and his book is readable as well as authoritative. A comprehensive bibliography follows the introduction, and appendices include data on referenda, departmental distribution among members of the *Bundesrat*, all of the elections to the council and the presidency, and the fifty-six gentlemen who have sat as members since 1848. While it is impossible here to present an adequate idea of the wealth of material embraced in this study, a few facts of interest revealed by Docent Håstad may be mentioned.

Most of the points briefly touched upon by Professor Rappard in his recent little volume on Switzerland are here treated in detail. The growing power of the Swiss executive is indicated by a mass of evidence. Like Rappard, the author finds the chief explanation for this in the great stability of the *Bundesrat*, the average length of service in the same being nearly twelve years. The character of its membership lends further support to this thesis. Out of the fifty-six who have been councillors, only two lacked parliamentary experience. Forty-two have been members of cantonal governments, and of the fourteen without such experience no less than twelve were jurists. Most of the members have been important party leaders, and the government therefore enjoys strong support in the legislative body. Their administrative functions and expertness in the performance of the same likewise serve to enhance the prestige of individual members of the Council. After considering the degree of initiative exercised by the executive in legislation, the party relationship existing between the two branches of government, and the degree of responsibility which is felt by the one to the other, Håstad raises the question whether one might not be justified in classifying Swiss government of today as a type of parliamentarism rather than the usually accepted characterization.

The presidential office in Switzerland is also portrayed in a somewhat different light from the "President of no Importance" described by W. D. McCrackan many years ago. Considered separately, the powers of that office are so slight as to afford some justification for the usual appraisal. Actually, however, the Swiss presidency is not quite the insignificant

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office it has been painted. The president has often represented the government in important political debates. Since 1914, the prestige of the office has increased. Prior to that time, the presidency derived its chief significance from the connection with the political department. When that condition ceased, the titular head of the republic came to be respected for other reasons, and today his office is the most distinguished open to political striving in the country. As such, it is sought after as the crowning reward of a long career of public service, and as such it also commands in high measure the respect of the Swiss people.

One other point brought out by Håstad may be mentioned in discussing another recent book on Switzerland. In his *Notre Grande République Soeur* and other works, Professor Rappard has stressed the familiarity of Swiss political leaders with the American constitution and the considerable extent to which they were influenced by our constitutional and political development in preparing their organic law. Earlier Swiss writers have also done this, and Americans have been happy to acknowledge this indebtedness. In her monograph, Sister M. Ann Joachim likewise brings out how Swiss statesmen were influenced by the American and French constitutional systems, which, she says, "must be traced."

No one will disagree with that assertion. At the same time, Håstad's book repeatedly emphasizes that the Swiss constitution is much more of a native document than has often been recognized and, in the opinion of the reviewer, this point is well taken. While the Swiss solution of bicameralism probably was influenced by American practice, and possibly also the distribution of authority between the federal government and the cantons, that is about all that was copied—if that much. As a matter of fact, bicameralism was really the only feature of the 1848 constitution which was novel to the Swiss (not considering the two-chamber legislature of the Helvetian Republic). Practically everything else had been tried before. The Swiss organic law was builded upon a native foundation. Political theory played little part in the deliberations of its framers. Rousseau, Montesquieu, Constant, and other names so popular upon such occasions were hardly mentioned in the Swiss constitution-making. Age-old tradition, plus much experimentation, was more important. With few exceptions, the governmental institutions established were adapted from the Swiss cantons rather than imported from abroad. Just as at Philadelphia it was the state constitutions of the Revolutionary period and the Articles of Confederation that formed the chief basis for what the nation is now celebrating—just as Madison stated that the new union consisted less in the addition of new powers than in the invigoration of already existing powers—so the Swiss drew mostly from their own past experience, which, as is well known, was quite ample for such purposes in most instances.

The dissertation of Sister M. Ann Joachim, which was submitted at

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Fribourg in 1936, is a less pretentious undertaking than that of Docent Håstad and is based almost entirely on secondary sources, most of which are familiar to the student of Swiss government. As she states in her introduction, however, "the works described and the majority of the source material used are either in the French or German language and consequently not available for the American reader." The contents of the book also are indicated in the introduction. "It endeavors to sketch the governmental history of both countries (Switzerland and the United States) up to the adoption of the respective constitutions in a summary way; it shows the difficulties both countries encountered at the time of the framing, adoption and ratification of the respective constitutions; it then goes into the divisions of the governmental machinery, describing the organization and powers of each of the three departments, and concludes with the governmental problems solved since the adoption of the constitutions and the various amendments thereto, not forgetting the important institutions of direct legislation, i.e., initiative, referendum, and recall." In seven brief chapters, comprising 115 pages, this is done well, even if "the present undertaking" does not go so very far "beyond all these other efforts" (to compare Swiss and American constitutions). A bibliography of twenty-one pages and a translation of the Swiss constitution "as revised to January 1, 1936," are welcome aids to the student.

ERIC CYRIL BELLQUIST.

University of California.

Political Behavior; Studies in Election Statistics. By HERBERT TINGSTEN. (London: P. S. King and Son. 1937. Pp. 231.)

The author has provided a very critical analysis of the available statistical material regarding the electoral participation and political attitudes of voters in various countries classified by sex, age, and occupation. He is particularly careful about arriving at a meaningful classification of occupations. In addition, data are presented on the relation of the following devices or conditions to voting behavior: compulsory voting, popular law-making, urban and rural environments, local elections, and systems of representation. Particularly valuable are some of the Swedish figures, which are made available in English for the first time.

On the basis of a careful marshalling of the evidence, the author has formulated a few "laws" of political behavior. One is the so-called law of dispersion. According to it, the dispersion (the differences) in regard to participation in an election, or within a certain group, is smaller the higher the general participation is. This rule is of importance in analyzing the effect of a high or low poll upon the final result, and a failure to recognize it has led a number of political scientists into false theorizing. Another rule is the "law of the social centre of gravity." In regard to social groups,

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the electoral participation within the group rises with the relative strength of the group in the electoral district. In other words, the attachment of a particular group to the party which on the whole may be regarded as representing the group most closely rises with the strength of the group within the area. While these laws may not be startling, they are sound and constitute a beginning of a scientific comparative politics.

The book does not make easy reading, but the job of translation has been well done. The author has not tried to enliven his account with case histories; and convenient summaries and an index are lacking. Students of democracy and election administration will, however, find the volume well worth while.

HAROLD F. GOSNELL.

University of Chicago.

The War and German Society; The Testament of A Liberal. By ALBRECHT MENDELSSOHN-BARTHOLDY. (New Haven: Yale University Press. 1937. Pp. xiv, 299.)

This work is one of the monographs in the German series of the Economic and Social History of the World War, of which James T. Shotwell is general editor. The author is one of the victims of the National Socialist Revolution, before his exile well known as the director of the Institut für auswärtige Politik, in Hamburg, and later as lecturer at Balliol College, Oxford.

In the editor's preface, homage is paid to the author's measured accent, to his fundamental objectivity combined with "the clear personal note of one who could rise above the warping prejudices of his time," to reticence and silences "bearing a truer witness to the impact of the War upon the German people than all the strident rhetoric of those who today speak officially for the Third Reich." The incompleteness and uneveness of the chapters, especially those dealing with economics, are the result of various circumstances. The author's sudden death left an unfinished manuscript. A great deal of the subject-matter calling for examination was withheld. Finally, a changing outlook of the post-war period had shifted the focus of criticism from the War to the peace treaties and their effects as the more apparent causes of the changes in the social order.

This brings us to the basic thesis of the work, namely, that most of the essential changes in the economic, political, constitutional, and administrative structure of post-war and present-day Germany have their root, not so much in the treaty of Versailles, pernicious as that treaty is admitted to be, but rather in the ever-expanding system of national planning during the ever-lengthening months and years of the war.

The peace-time conception of a measurably just relation between "effort of will" and "result" and the belief in justice as one of the prin-

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ciples of life were lost as a consequence of defeat. Faith in providence gave way to belief in luck, in success as the new guiding principle in business and politics. *Suum cuique* was replaced by a full portion of *meum*. Science and industry, already in the ascendency over the humanities before the War, became the allies of the military and secured the mastery over the national civil service and the administration of the states and municipalities. The conduct of war affairs meant not merely mobilization and preparation in the technical military sense, but totalitarian regulation of business, trade, agriculture, and to a large degree of the spiritual process as well. Political parties of the right and center, manufacturers and high finance, consented to national planning as far as it went as favoring their political ideals and interests. Political parties of the left and labor unions welcomed it as a promising beginning in socialization.

Much more should be said of this stimulating book, but it cannot be said here.

JOHANNES MATTERN.

The Johns Hopkins University.

Post-War German-Austrian Relations: The Anschluss Movement, 1916–1936. BY M. MARGARET BALL. (Stanford University Press. 1937. Pp. ix, 304.)

Professor Ball has written the most informative book in English on the *Anschluss* movement. A sober presentation of the facts is supplemented by quotations from party leaders and from documents. (A wholly incidental result of her research is that it attests to the high quality of the work done on this subject by the late Mildred Wertheimer, of the Foreign Policy Association.)

When Bismarck forged the German state, the dynastic rivalries of Hapsburgs and Hohenzollerns and the existence of millions of people of non-Germanic stock in the Austro-Hungarian Empire made impossible the inclusion of Austria in a unified Germany. The idea remained latent in the minds of many patriots, and the break-up of the Austro-Hungarian Empire on the principle of self-determination seemed to the demoralized Austrians an opportunity to realize the *Grossdeutsch* program. The German and Austrian constitutions of 1919 both provided for the incorporation of Austria in the new German *Reich*.

The French government, however, could not tolerate a defeated Germany emerging triumphantly from the war with increased territory and population. There were twenty million too many Germans already, growled Clemenceau. In any case, there was no possibility of handing over to Germany the six million German Austrians who had been incorporated in Czechoslovakia, Poland, Yugoslavia, and Hungary; and the potential threat to Czechoslovakia, if by *Anschluss* she were engulfed on

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three sides by Germany, was sufficient justification to the French for thwarting the principle of self-determination in this particular. As a consequence, the Allied Powers by various means forbade *Anschluss* without a unanimous vote of the Council of the League of Nations.

The subsequent history of the movement is recounted in accurate detail by Professor Ball. M. Briand's United States of Europe was a pawn in the game against *Anschluss*. This scheme of the Quai d'Orsay was already moribund in 1931 when news of the proposed Austro-German customs union leaked out. The French promptly revived their concept of Pan-Europa, but the Austrians and Germans had a clever answer. They believed in the idea of European economic union, but could not await its slow development. They were therefore proposing a Central European customs union as a preliminary step along the right road. They even planned to include Hungary and France's Little Entente allies in the union.

The inevitable defeat of the customs union plan is discussed elaborately in two chapters and, in a third chapter, the author makes an analysis of the legal issue which went to the Permanent Court of International Justice. The last three chapters of the book give an account of current political maneuvering in Austria, the rise of Italian influence, and the decline of *Anschluss* sentiment in Austria since the Hitler way of life has conquered Germany.

The book is grounded firmly on the documents, and its worth is increased by the inclusion of admirable surveys of the contemporary Austrian press at various stages of the drama. An appendix prints a number of relevant protocols—including the Italian-Austrian-Hungarian protocols of 1934 and 1936—and a large bibliography adds to the value of the study.

HERBERT W. BRIGGS.

Cornell University.

The Profits of War. By RICHARD LEWINSOHN. Translated from the French by Geoffrey Sainsbury. (New York: E. P. Dutton and Company. 1937. Pp. viii, 287.)

That wealth can be acquired by war as well as by work was doubtless the first lesson of politics. It was perhaps the initial discovery which, in its subsequent elaboration, gave rise to the institution of the state. War-makers first sought plunder. Later they attempted enslavement. Still later, the objective of military violence became annexation and exploitation. On each level, the practice of violence enriches the élite whose activities are of decisive military significance. War does not pay—everybody. But war always pays—somebody.

Richard Lewinsohn has here undertaken to survey through history the successive somebodies who are paid. His chapter headings suggest their

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identity: "The Generals," "The Financiers," "The Armament Firms," "The Contractors," and "The Speculators." This work is largely undocumented and is in no sense an adequate sociological analysis of the effects of war upon the distribution of material satisfactions. It is racy journalism, highly readable, suggestive, and sensational. Its closing chapter—"The Struggle Against War Profits"—is a mere sketch of recent legislation in the Western democracies. But the author has brought together a mass of fascinating data which deserves the careful consideration of those interested in broad questions of public policy toward the arms industry and also, of course, of those interested in war profit scandals *per se*. Most of the scandals are here—from Julius Caesar and the feudal baronage through Wallenstein, Marlborough, Wellington, Bismarck, the Rothschilds, Jay Cooke, Ouvrard, *et al.*, to Krupp, Vickers, Morgan, Dupont, and their contemporaries. Some of the evidence necessary for an evaluation of policy is likewise here.

Although Lewinsohn, as a good reporter, indulges in a minimum of interpretation, his work is a wholesome corrective to the common view that war profits are made primarily by the manufacturers of munitions. Early war profiteers were generals and statesmen. The profiteers of today are all entrepreneurs in all branches of economic effort relevant to the prosecution of totalitarian war. Arms-makers, as the author repeatedly emphasizes, seldom "want war." Their trade flourishes better when war threatens than when war comes. "What they want is not war but a precarious peace." Of the thirty billion dollars of war profits which Lewinsohn estimates were realized in all belligerent and neutral countries during the World War, one-third was taken by governments in the form of taxes. In all probability, the bulk of the remainder went, not to the "merchants of death," but to a bewildering multiplicity of other producers. "Julius Caesar's place is now taken by some magnate of the canning trade."

Such a survey necessarily raises more questions than it answers. Is it politically and economically feasible, however morally desirable such a course may appear to be, to attempt to "take the profits out of war" in an age when men will gladly die for causes but will not produce goods and services except for money? Can any clear line be drawn today between war industries and non-war industries? Can the waging of war be removed from the orbit of capitalistic enterprise by legislative fiat without either destroying the foundations of capitalism in general or ham-stringing the economic sinews of "national defense"? Do armaments cause wars, or do wars, i.e., the expectation of violence in inter-state relations, "cause" armaments? Are war profiteers important as determinants of foreign policies leading to conflict, or are they rather the incidental beneficiaries of the game of power politics? Lewinsohn evades such knotty problems. But reflection upon his evidence will suggest that the glib answers cur-

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rently given to such queries by pacifists and politicians have little or nothing to do with the case.

FREDERICK L. SCHUMAN.

Williams College.

Legal Machinery for Peaceful Change. By KARL STRUPP. (London: Constable and Company. 1937. Pp. 85.)

Peaceful Change; A Study of International Procedures. By FREDERICK S. DUNN. (New York: Council on Foreign Relations. 1937. Pp. 156.)

Professor Strupp's monograph will never be popular with the casual reader. The technical nature of its form and scope promises to provide interest only for the serious student of international jurisprudence. Lamenting the fearful gaps in existing juridical machinery and international law which exclude crucial subjects from the jurisdiction of the World Court, the author proposes the erection of an equity tribunal empowered to apply in such instances "generally recognized principles of international justice such as ought to be law." In case of a conflict of jurisdiction between the Court and the "Permanent Court of International Equity," the presumption is to be in favor of the latter, since the ultimate desire is a "final settlement" of the dispute as a whole, rather than of one of its legal aspects.

The value of the author's suggestions lies not in their originality, but rather in the manner in which he has dovetailed an equity tribunal with all other existing peace agencies. One is continually impressed with his patience, care, and consideration of detail. His plan is presented in the form of a draft convention plus an "International Peace Charter" to be adhered to by the states of the world and to supplement covenants already in force. To clarify each step, he liberally intersperses commentaries and notes in the body of his draft, a mode of presentation which often makes for difficult reading and loss of continuity. Without wishing to detract from the purely juristic value of the work, one cannot help asking whether the imposition of one more pact, one more court, upon the existing world polity, even if possible, without some more fundamental corrections in the realm of *Realpolitik*, holds much hope for a "final settlement." A splendid introduction by Professor Scelle augments the value of the book.

Reliance upon pure legalism is firmly opposed by Mr. Dunn in his eminently realistic volume. Power, its acquisition and preservation, is the keynote of modern foreign policy. It is idle to devise new machinery for peaceful change while failing to "take full account of existing values and attitudes which determine national policies." It is not enough to settle *legal* differences. Why amend Article 19 of the League Covenant to facili-

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tate changes in treaties? Formal treaties are but written expressions of agreements already reached. The first, and clearly the most crucial step, involves the reaching of these preliminary agreements. In the absence of an overwhelming international coercion, this is possible only by methods which do not disturb intricate power relationships. Political and economic considerations lie at the core of international friction: population pressure, demands for raw materials, territorial reallocations, and ethnic aspirations are the basic issues.

Reviewing the arguments on both sides, Mr. Dunn, in most cases, rejects the propositions of the Have-Nots, not so much for lack of merit as for their failure to offer solutions which, while modifying the status quo, will not raise equal or greater power issues. On the positive side, he offers several practical suggestions for peaceful change. Instead of restoring Germany's colonies, might it not be feasible to establish an international protectorate over some agreed region in Africa? This area, made up of contributions by several powers, could be administered and developed by an international commission on which Germany should be adequately represented. As to ethnological problems, it may be desirable to erect an international commission to supervise the government of racial minorities by the victorious as well as the defeated states. The vital issue of raw materials might be resolved by the development of codes of fair practices to protect the interests of consumer nations. An agency similar to that regulating the opium traffic may be the first answer. Of course, much depends upon an increase in international trade, and resort to trade and currency agreements and international credits is encouraged.

To attain these ends, it may be wise not to depend entirely upon existing procedures for peaceful change; diplomatic negotiations, international conferences, conciliation and mediation, and adjudication have been so often advanced for the settlement of *disputes* that they now arouse defensive attitudes in the mind of each nation. Perhaps a less formal approach would be more fruitful. Mr. Dunn proposes the formation of small, efficient committees in each country, made up of outstanding men connected in no official way with government. These committees, in a quiet way and without the spotlight of publicity, could engage in intercourse and lay the groundwork for satisfactory agreements on disputed points. Above all, extreme care to avoid disturbing existing power relationships must be the guiding principle of action.

The political realist will appreciate the clear thinking and hard common sense which permeate the pages of this concise little book. The one criticism that he may express arises out of the author's failure to carry out further his concrete suggestions for positive action.

VERNON A. O'ROURKE.

Union College.

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The Press and World Affairs. By Robert W. Desmond. (New York: D. Appleton-Century Company. 1937. Pp. xxv, 421.)

Dr. Desmond has contributed an important survey of information on international news channels and the foreign press, at a time when widespread interest demanded a discussion of these topics. Strangely enough, the volume is the first attempt in the English language to show in detail, at least by exposition and inference, the complexities involved in efforts to supply the world with news or with "the truth." As Professor Harold J. Laski asserts in the introduction, "if we can get from books of this quality the vital sense of how intricate our problems are, how useless is the search for simple remedies, we shall have set our foot on the right road."

Students of public affairs and of the newspaper press have, indeed, been surfeited for years with simple remedies for problems of the press and its rôle in society. Manifold obstacles to adequate reporting of the news, and the subtle relationships between social systems and the press have been touched mainly by generalizations and scattered accounts.

This volume does not pretend to arrange the facts in support of a thesis. Perhaps it fails to generalize and to comment enough, on the basis of abundant facts and examples included in its pages. It does, however, marshal evidence which will serve as background for an appreciation of the task involved in the gathering of world news. The author has drawn on his experiences as a newspaper man in the United States and in foreign capitals, and on material gathered for a doctoral dissertation for the University of London School of Economics and Political Science. The first four chapters describe the methods employed by foreign correspondents and the conditions under which they work, the development and the interrelationships of the large news-gathering agencies, the importance of transmission facilities, and the political implications in the control of communication agencies. This discussion is supplemented by a brief survey of the limitations imposed on correspondents by governments and powerful interest groups. Three succeeding sections of the volume describe the main news centers of the world and the newspaper press in a score or more of countries.

The total picture is not encouraging. Unhappily, even an able and well-informed correspondent is not generally in a position to report everything that he would like to include in his dispatches. Nor is he allowed, with calm mental detachment, to take his time, ignore pressures at home and abroad, neglect compromises which will determine whether he shall report something or nothing, or forget the peculiar "news-mindedness" which tradition or ideology has developed in his home country.

It is difficult to quarrel with a recital of world-wide news-gathering methods and developments, unless one chafes at a newspaperman's inability to discover solutions to his intricate problems. Dr. Desmond believes that the foreign correspondents have made a good record despite

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the difficulties involved in their tasks. His work is not, however, an apologia for news-gatherers or for nervous publishers in the United States whose viewpoints are affected by incipient threats "to the freedom of the press" or to profits. All in all, the volume represents a serious attempt, documented and clearly written, to submit evidence preliminary to drawing decisions or arriving at solutions.

RALPH O. NAFZIGER.

University of Minnesota.

BRIEFER NOTICES

AMERICAN NATIONAL GOVERNMENT AND POLITICS

In a year commemorating the one hundred and fiftieth anniversary of the framing of the Constitution of the United States, a recent number of the Johns Hopkins University Studies in Historical and Political Science (Series LV, No. 2, 1937) is of special interest. This issue of the Studies is a treatise on *The History and Development of the Fourth Amendment to the Constitution of the United States* (pp. 150) by Nelson B. Lasson, of the University of Maryland. The text is divided into four chapters, the first of which shows that "the right of the people to be secure in their persons, homes, papers and effects, against unreasonable searches and seizures . . . " was not an invention of English jurisprudence, in spite of the well-known maxim that "an Englishman's house is his castle." The fundamental idea embodied in the amendment is, on the contrary, found in Biblical literature and in the Roman law. In the second chapter, the use of and the opposition to writs of assistance in the colonies is described. The third chapter is devoted to the demand for and the adoption of a bill of rights to the Constitution, with special emphasis upon the formulation and approval of the Fourth Amendment. An interesting point in this chapter is the evidence that the House of Representatives once rejected the Amendment as it now reads. It was subsequently restored in its present form, however, by the committee on arrangement and finally adopted by both houses. The last chapter of the book is concerned with the interpretation of the Fourth Amendment by the Supreme Court of the United States. In the earlier years of our national history, few cases involving the amendment reached the Court. But with the extension of the criminal jurisdiction of the United States, especially in cases of sale of narcotics and intoxicating liquors, such cases multiplied. The treatise is well annotated and fully documented and includes a table of cases cited. —F. E. HORACK.

Even casual observers have long been aware of the need for reforming the system of financial control in our federal government. In *The Ad-*

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ministration of Federal Finances (Brookings Institution, pp. 71), Daniel T. Selko proposes to present "for impartial public consideration" the fundamental differences between the pertinent recommendations of the Brookings Institution and the President's Committee on Administrative Management. His outline of the existing organization and procedure in Part I is necessarily brief, but is clearly presented and will be useful to the uninitiated. A glossary of financial terms is helpfully appended. After pointing out several important matters of agreement between Brookings and the President's Committee, Mr. Selko undertakes an able but unconvincing defense of the Brookings view on the controversial issues. Several telling criticisms of the President's Committee report indicate that all problems would not be automatically shelved by inaugurating the Buck-Brownlow-Merriam system. Yet, in developing his argument, the author at times slights the strongest points in the opposition brief. For example, his summary of the "principal defects" in the expenditure control system (pp. 31, 50) completely ignores one of the chief points upon which the President's Committee proposal to transfer the control function from the independent General Accounting Office to the Treasury is based, namely, the costly impact of Comptroller-General rulings upon administrative action. Students of financial administration will find Mr. Selko's analysis an important, but not the final, pronouncement upon the Brookings-President's Committee imbroglio.—JOHN MCDIARMID.

In *The National Debt and Government Credit*, Paul W. Stewart and Rufus S. Tucker, assisted by Carolyn Stetson (Twentieth Century Fund, Inc., pp. xviii, 171) are responsible for the factual material upon which the report of the Committee on Government Credit of the Twentieth Century Fund is based. The report contains seven chapters dealing with the nature of government credit and its history in the United States, government policies and credit, government receipts and expenditures, a comparison of debts and expenditures of the United States, Great Britain, and France, the question as to whether or not the present debt is a menace, and a final chapter on the future of the government debt. Space is lacking to treat these topics in any detail. Suffice it to point out that the historical and factual material involved is fully and, with one or two minor exceptions, accurately covered. Greatest interest, perhaps, attaches to the conclusions of the Committee. The Committee finds that the government credit is at present sound, but feels that a balancing of the budget plus debt reduction in the suggested amount of $1,000,000,000 a year is an urgent necessity to maintain sound credit in the years to come and to prevent inflation—which is a virtual repudiation of part or all of the government's debt, depending upon how far it proceeds. One member of the Committee, Miss Joanna Colcord, while voting for the general

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recommendations, emphasized the fact that she was not in favor of a reduction of expenditures, particularly relief expenditures, to accomplish the ends recommended by the Committee. With the heavy burden of taxation already borne by the American people, this attitude will scarcely appeal to the average taxpayer. In any event, one thing is clear. Budget-balancing with debt-reduction, whether through increased revenue or decreased expenditure, is essential to the maintenance of sound government credit in the United States.—FREDERICK A. BRADFORD.

"There is less difficulty in finding a good reason for revising a textbook on American government than there is in justifying a first edition," says Claudius O. Johnson in presenting a 1937 revision of *Government in the United States* (Thomas Y. Crowell Co., pp. xii, 735). He follows the arrangement of his 1933 edition (see *supra*, Vol. 28, p. 336, April, 1934). This topical ("functional") treatment is brought up to date by taking account of "new" New Deal agencies and recent Supreme Court decisions. The section on local government is expanded and one is added on pressure groups. An interesting feature is frequent references in the footnotes to other texts and to *Time* magazine. Some passages have not been brought into conformity with revisions made in others, but the work has been thorough and few important changes have escaped notice. The author fulfills adequately his desire to present "only an introduction to the subject."—ROBERT W. MCCULLOCH.

What one government agency is doing about the training of administrators is now available in *Training Program for Internes in Public Administration and Assistants in the Personnel Department* (Tennessee Valley Authority, pp. 43), compiled by members of the Personnel Department of the Tennessee Valley Authority. A statement of general principles is followed by a detailed description of a program of departmental contacts and of training assignments. The reading list for internes is included, as well as a statement of reports to be prepared. Teachers of public administration should find the syllabus useful as a source of suggestions, and as a description of the training in administration now provided by the Tennessee Valley Authority.—H. W. STOKE.

An Annotated Bibliography of Robert M. LaFollette; The Man and His Work (University of Chicago Press, pp. xi, 571), by Ernest W. Stirn, is an excellent piece of work. It includes material on the early period of LaFollette's life, covers the congressional record of his twenty-six Washington years, and supplies an index of the *New York Times* and *Tribune*. We are furnished an index to periodical literature, 1900–1936, and a fine collection of secondary source materials. The book should prove decidedly

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useful to all students of the period in which LaFollette lived.—PAUL M. CUNCANNON.

STATE AND LOCAL GOVERNMENT

In *The Provisional Appointment in City Civil Service Systems* (University of Pennsylvania Press, pp. v, 130), Miss Reinhold has contributed a local case study of the type needed if we are to make valid generalizations not alone in regard to personnel management, but in other phases of administration. Although the author entitles her study "Provisional Appointments in City Civil Service," she covers, as a matter of fact, various aspects of employment administration running from examinations to dismissals and retirement. It may be emphasized, however, that the treatment of these other phases is of an impressionistic character and not supported by data. This does not imply that the opinions expressed are not of use and significance. The author refers to the oft-repeated criticism of the administration of civil service laws to the effect that the abuse of the provisional route into the civil service is one of the most popular means for undermining and evading the merit system. The data presented go to show that from sixty to sixty-five per cent of permanent appointments were originally provisional appointees in the years 1932 to 1935, inclusive. Several competent witnesses in addition to the author express the opinion that in non-depression years the percentage will approximate ninety per cent. It appears that the Civil Service Commission does not avail itself of the device of reappointment after the stipulated three-month period, but is quite regular in seeing to it that examinations are punctually given, and further, that the provisional examinees usually stand at the top of the list. The methods for bringing about this much-to-be-desired result from the viewpoint of the patronage-mongers are relatively simple, in that the examination is based on the duties of the position concerned, and that the personality factor is so weighted that the appearance of regularity can be maintained. Then, too, in order to create vacancies, "voluntary" resignations are called for at the time of the turn-over in administration, or an eligible list is nullified at the end of a year instead of two years, the standard requirement. Miss Reinhold is quite justified in asserting that the administration of this law shows how one may have civil service and still fail to have a merit system. In view of her indictment, however, she is hardly justified in breaking a lance for the Commission as she does at several points in her treatise. It is difficult to see how one can say a good word for a "dependent Commission which must take orders from the comptroller and the mayor, to say nothing of an infinite number of small-time politicians." In one chapter, useful information is brought together concerning the handling of provisional appointments in other cities, as well as ratios of provisional

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appointments to permanent appointments. In closing, the reviewer would reiterate the hope that those of us interested in administration should stimulate more and more studies of this sort. They are necessary if we are to have supporting data for many of the generalizations that are being made concerning various phases of public administration.—WILLIAM E. MOSHER.

State Control of Local Finance in Oklahoma (University of Oklahoma Press, pp. xiv, 281), by Robert K. Carr, is distinctly superior to many studies of intergovernmental relations in that it is more than an analysis of legal provisions contained in statutes and court decisions. While the author has necessarily drawn heavily upon statutory and case materials, he has made substantial use also of published reports and unpublished records of various governmental agencies, the whole being enlivened by a liberal sprinkling of data obtained from questionnaires, interviews with public officials, newspapers, and miscellaneous publications. These latter sources have made possible the presentation of an excellent picture of state control as it actually operates in the everyday administration of local finance. The discussion of historical background is reduced to a minimum, the study dealing almost entirely with conditions as they existed from 1931 to 1935. Analysis of the various methods and agencies of state control in Oklahoma reveals that the system is entirely lacking in any single underlying purpose. Professor Carr suggests a plan whereby the legislature would place certain limitations upon the power of local units to determine financial policy, while the *administration* of the fiscal program undertaken by the local authorities within those limits would be supervised, as far as central supervision is considered desirable, by a single state department of local finance instead of by numerous different agencies as at present. He opines, however, that any satisfactory program of state supervision of local finance must be preceded or accompanied by a reduction in the number of local governmental units and a revamping of the state tax system. Although at some points the style is a bit ponderous for the general reader, for the most part the book is very interestingly written, the author having succeeded in presenting in an engaging manner subject-matter which, under a less skillful hand, might easily have become tedious and dull. The book will rank among the most valuable of the recent studies of state-local relations.—CLYDE F. SNIDER.

While Allan G. Gruchy's *Supervision and Control of Virginia State Banks* (Appleton-Century, pp. 327) deals particularly with public regulation of banks in Virginia, enough comparative statistics are introduced to make the volume of value to those who have a general interest in this problem. The comparisons are also sufficient to show that Virginia may

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profit from the better regulatory practices of other commonwealths. The book falls into distinct parts: (1) development of banking regulation in Virginia, 1780–1936; (2) the legal basis of regulation; and (3) a critical analysis of present regulatory methods of the banking division of the state corporation commission. While the state regulatory agencies perform efficiently the routine administrative functions of bank examination and report, they fail, as Mr. Gruchy points out, in an aggressive, positive attack upon state banking problems. Failures and mergers of state banks show an unhealthy condition and the need for adequate regulation of the Virginia unit banking system. The author believes that improvement along this line can be had by: (1) setting up an independent banking board, with full jurisdiction over state banks, and (2) organization of a banking department with expert personnel and in proper divisions for performing regulatory functions.—J. E. PATE.

E. Glenn Callen's *The Administration of Nebraska's Labor Laws* (Bulletin No. 4, State of Nebraska, Lincoln, Nebraska, pp. 80) is a study of the state's industrial legislation. The suggested sub-title, "Labor Legislation in an Agricultural State," is probably more appropriate, as there is greater emphasis on the explanation and analysis of the law than on its interpretation and application by administrative agencies and the courts. The first chapter is devoted to the Nebraska department of labor —its history, powers, and duties. Subsequent chapters discuss the various types of labor legislation, including regulation of hours of work and employment conditions, child-labor legislation, organized labor and the law, unemployment legislation, and workmen's compensation. The last subject is treated at length in six chapters which constitute over half of the treatise. In a final chapter, the author concludes that there are several meritorious features of Nebraska's labor laws—their sound constitutional basis, high standards of child-labor regulation, the workmen's compensation system, and the recently established (1935) compensation court. He also asserts that the main shortcomings are the restricted application and inadequacy of the compensation law, insufficient supervision of workmen's compensation insurance, and the inadequacy of labor laws pertaining to women.—ALEXANDER T. EDELMANN.

Elwyn Arthur Mauck's *Financial Control in the Suburban Areas of New York State* (New York State Commission for the Revision of the Tax Laws, pp. xvii, 270) is an outstanding contribution on the financial problems of suburban governmental units. The study constitutes the tenth report of the New York Commission. These reports have for many years been among the leading research efforts in the United States on state and local financial problems. Mr. Mauck's study is also a model doctoral

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dissertation in this field. Of the seven metropolitan areas in New York State, the most intensive analysis was given to the Buffalo and Rochester regions, with minor consideration for smaller areas such as Albany-Schenectady-Troy, Binghamton, Syracuse, and Utica. Counties, cities, villages, towns (townships), school districts, and special districts were included. The greatest problems were found in the town governments and their related special districts. Excellent features are chapters upon charter reform under the county home rule amendment, and emphasis on state supervision and control of (a) indebtedness and (b) subdivision. A state municipal finance commission is recommended to administer and allocate over-all debt limits among the various units. The volume contains twenty-seven tables, five appendices, seventy-eight charts, fifty-one maps, and an index.—EDWARD W. CARTER.

In a legalistic study, *The Delaware Corporation* (No. 25 in the New Series of Johns Hopkins University Studies in Historical and Political Science, Johns Hopkins Press, 1937, pp. 199), Russell Carpenter Larcom discusses the reversal of legislative policy in 1899 after which the attitude of Delaware became "one of willingness to enact the changes which business men have desired." He covers the relationship between the certificate of incorporation and the law, the changes permitting holding companies, the expanding powers of directors over the corporation, and over the rights of stockholders and creditors. A statistical summary leads to the conclusion that Delaware has been very successful in attracting the trade and should bear the lion's share of responsibility for what is good and bad in modern corporation practice.—HARVEY PINNEY.

Excellent material has been collected by Bower Aly for *Unicameral Legislatures* (Lucas Brothers, Columbia, Mo., 2 vols., pp. 220 each). The first volume contains a good bibliography and articles by competent authorities, prepared especially for this eleventh annual debate handbook of the committee on debate materials and interstate coöperation of the National University Extension Association. The second volume reprints excerpts from various sources which provide additional information concerning bicameral and unicameral legislatures. The volumes should interest many besides the debaters for whom they are primarily designed. —HOWARD WHITE.

FOREIGN AND COMPARATIVE GOVERNMENT

Recently, there have appeared several textbooks in the field of European government that have been characterized by their brevity. Some have dealt with the governments of five or six countries, while others have been studies of the institutions of but one state. This emphasis on

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brevity sometimes results unfortunately, however, for such textbooks often contain only superficial and generalized information that renders them of little service to potential users. Perhaps their authors, of necessity, are unable to present information beyond that contained in sources already easily available. In his *Government of England* (D. Van Nostrand Company, pp. x, 326), R. K. Gooch avoids some of the sins of omission which limited space inevitably brings and succeeds in presenting an accurate and balanced, although limited, account of British government. Among the commendable features of the book is the author's attempt to secure a balance between a mere descriptive account of English institutions and a discussion of principles underlying British political practices. Any attempt to supplement the *how* of government with the *why* is desirable. Notwithstanding its good points, this book has serious limitations. The laudatory treatment of British institutions might, in some instances, better have been tempered by judicious criticism. The author states that this is a textbook written to be "helpful to American college and university students." Yet the book "does not incorporate the results of any special studies or particular researches." Perhaps because it does not, the value of the work is lessened. The reader will not find a great deal of information about such important problems as, for example, those of delegated legislation, local government finance, recent tendencies in local government personnel practice, or recent proposals for reform of the House of Lords. Any text on English government should include more than a summary discussion of these matters.—HARLOW J. HENEMAN.

Historians of parliamentary procedure will find a valuable new source of information in *The Liverpool Tractate; An Eighteenth-Century Manual on the Procedure of the House of Commons* (Columbia University Press, pp. xcii, 105), edited with an introduction by Catherine Strateman. Few clues are available as to the authorship of this hitherto unpublished manuscript, but its composition can be dated as of 1762–63. As pointed out by the editor, a number of treatises on the procedure of the British Parliament were published in the late sixteenth and early seventeenth centuries, and again in the nineteenth century, but few such treatises are extant for the long intervening period. The publication of this manuscript thus fills a distinct gap in the literature of the development of parliamentary procedure. This treatise obviously was written by a man of long experience in the work of the House of Commons, and gives much information, particularly on the functioning of committees, that could not possibly be adduced from the *Journals* and other available sources. Even more valuable than the document itself is Miss Strateman's carefully compiled bibliographical essay on the early treatises on Parliament. This

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is a job that emphatically needed to be done. Anyone who has occasion to consult these treatises will certainly be confused by their anonymity and plagiarism, and will appreciate the guide-posts furnished by the present work. It is regrettable that Miss Strateman did not make this bibliography still more complete by referring to the materials on parliamentary procedure surviving in the writings of Sir John Eliot, Edward and John Chamberlayne, and Guy Meige. There is little to criticize in Miss Strateman's essay on the development of procedure, except to point to contradictory statements concerning the frequency of committee of the whole in the early seventeenth century, and to take issue with her classification of the previous question as a method of destroying a motion without actually voting it down.—JOSEPH R. STARR.

The third and final volume of Ian Colvin's *The Life of Lord Carson* (Macmillan Co., pp. 463) begins with the outbreak of war. Carson and the Ulstermen agreed that "England's difficulty is not Ulster's opportunity": the Ulster Volunteers joined the British army, and the Home Rule Act was postponed until the end of hostilities. Carson showed the same energy and determination in his war-work as in his fight against home rule, finally resigning from the cabinet in protest at Asquith's procrastinations and compromises and at the abandonment of Serbia. (The author traces his important share in bringing about the fall of the Coalition and the elevation of Lloyd George to the prime ministership in 1916). He became the leader of the parliamentary opposition and worked openly to oust Asquith from office, since with him as prime minister "it is absolutely impossible to win the war." In December, 1916, his intervention was decisive: he persuaded the hesitant Bonar Law to transfer the Conservative support to Lloyd George. The following chapters describe Carson's work at the Admiralty, his dismissal in 1917 because of his opposition to Lloyd George's interference there, and the endless and abortive negotiations between Ulstermen and Nationalists for a settlement of the Irish question. In the interest of the prosecution of the war, Carson persuaded Ulster to agree to Irish home rule providing that their own six counties were excluded, a solution, however, unacceptable to the Nationalists. Carson refused to support, but did not oppose, the act of 1920, because, while he was opposed to home rule in any form, the exclusion of Ulster was preferable to the act of 1914. The conclusion of the 1921 treaty between Sinn Fein and the Government was followed by outrages in the vain attempt to coerce Ulster into joining the Irish Free State. Carson was convinced that Lloyd George tacitly approved; and therefore he took a prominent part in the maneuvers which led to the revolt of the Conservatives and the fall of Lloyd George.—LENNOX A. MILLS.

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The student of comparative government anxious to learn about contemporary German politics and institutions can hardly complain any longer of a shortage of books on the subject—descriptive or analytical, scholarly or journalistic, sympathetic, studiously fair, or frankly hostile. Although the "historical background" in most of these plays a certain rôle, a short historical evaluation of the whole post-war period still was lacking. Frederick L. Schuman's most recent contribution on Germany—*Germany Since 1918* (Henry Holt and Co., pp. xii, 128)—fills the gap most effectively. In this latest addition to the *Berkshire Studies in European History*, Professor Schuman, in three tightly-packed chapters, tells the story of the incubation, childhood, and decrepitude of the Weimar Republic and of the sequel since 1933. In his selection of historical data, he is guided by a two-fold assumption: "that transition periods of crisis are worthy of more detailed presentation than periods of normalcy," and, moreover, "that the *raison d'être* of all politics is competition among sects, classes, parties . . . for the control of the coercive and distributive machinery of the state as a means of changing (or preventing changes in) prevalent apportionments of satisfactions" (p. x). He is also pleasingly frank in labeling his own historical "bias" as that of a "liberal." On the basis of these several premises, Mr. Schuman presents a pithy and dramatic account of these portentous years, in which this reviewer cannot detect any major flaws. One may disagree here and there with a particular accent or shade of interpretation. One may also feel that the comprehensive label "liberal" is somewhat overworked when applied to the conservative Professor Hoetzsch, the Catholic leader Dr. Brüning, and the Weimar constitution. One would like to know Mr. Schuman's source for the statement that Ebert, Scheidemann, and Noske approved the acquittal of the murderers of Liebknecht and Luxemburg (p. 20), and that, after the Kapp Putsch, the Ebert government "paid the rebel soldiers a premium which Kapp had promised them and sent to jail a republican recruit who had deserted from the rebel ranks" (p. 32). Is it not a little misleading to say that under the Weimar constitution "Parliament was charged with interpreting the constitution" (p. 24)? Despite such slips of the pen, this is a most enlightening and colorful portrayal, whose usefulness is enhanced by the addition of a chronology of post-war cabinets, election results, the program of the N.S.D.A.P., and a very substantial critical bibliography.—WOLFGANG H. KRAUS.

In National Socialist thought, the Weimar Republic belongs to the limbo of forgotten things. The serious historian cannot so lightly dismiss it from memory, but must increasingly investigate its brief and troubled existence. For this reason, Arthur Rosenberg's *A History of the German Republic* (Methuen, pp. xii, 350) is welcome as a comprehensive, bal-

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anced, and scholarly contribution to the proper understanding of post-war Germany. The author is already known through his previous books, *The Birth of the German Republic* (1931) and *A History of Bolshevism* (1934). In his earlier study on the origins of the German Republic, Dr. Rosenberg covered the period from 1871 to 1918; in the present work, he has analyzed the years from 1918 to 1930. Both by training and by experience, the author is well qualified for his task. He was formerly professor of history at the University of Berlin. He was a leading official first in the Independent Social Democratic party and then in the Communist party, was a member of the Reichstag from 1924 to 1928, and took an active part in politics. There are places in the *History of the German Republic* where Rosenberg's own *Weltanschauung* colors his views of men and events, but for the most part he writes with objectivity and freedom from bias. In preparing the volume, the author has drawn upon a wide range of source materials (see the "Notes and Documents," pp. 323–341), such as the hitherto unused minutes of the meetings held by the Council of People's Commissars in November and December, 1918. Stresemann receives high praise. He was the "first German statesman since Bismarck who had a comprehensive foreign policy and who really carried out his policy in a determined fashion" (p. 232). Rosenberg also calls attention to the "astonishing resemblance" (p. 302) between Bethmann-Hollweg and Brüning. The former "prepared the way for the destruction of the German Empire;" the latter destroyed "the last remnants of the Republic." Although the main account closes with 1930, an "epilogue" has been added for the English edition of the book. The translation has been competently done by Ian F. D. Morrow and L. Marie Sieveking.—ROGER H. WELLS.

Once the governmental logic and technique of the German "leadership state" are clearly understood on general principles, it requires no particular acumen to perceive that the judicial branch of government will have to be restrained by a variety of limitations in order to assure the desirable harmony. If, therefore, a recent German doctor's dissertation by Otto Reitis, *Die Richterliche Nachprüfung von Staatsakten in nationalsozialistischen Staat* (Berlin: C. Trute, pp. xi, 136), on the judicial control of governmental acts in the National Socialist state represents no startling gain to our general insight, it is yet a useful and frequently revealing statement of the doctrine and practice in this phase of German statecraft. In five chapters, the author appraises judicial review of legislation before and after 1933, of governmental acts of state, of other acts of state, and finally of non-political administrative measures. Despite his general propriety, the author insists that it might be dangerous to class all measures of the state—legislative, executive, or judicial—as political

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simply because in a fashion they all serve the interests of the state. For such a result, with the necessary withdrawal of all political acts from judicial cognition, would, in his opinion, lead to a denial of the *Rechtstaat*, since there would be no judicial remedy left against any governmental act (p. 62). It certainly would not be feasible to have judges determine political issues, as they are bound by the rule of law; and "dynamic politics cannot be forced into the norms of the legal order" (p. 63). Moreover, "the present unity of administrative and judicial establishments forbids the presentation of divergent answers to questions of political necessity. . . . Adjudication as well as administration have to serve politics." All in all, the withdrawal of political controversies from the courts is deemed best for the community and the judiciary itself. Obviously, a continuance of the former "liberal" practice of judicial review of legislation is no longer reconcilable with the principles of leadership, authority, and totality. The leader's "irrational responsibility," his complete authority, and the sway of public over private right are sufficiently weighty arguments. On the other hand, the author does claim that within certain limits there is a place for the judicial review of ordinances. His discussion of this problem and particularly his brave attempt to furnish a new theory of administrative adjudication in the Third Reich (" . . . the principle of hierarchic leadership demands obedience to the leader's will and, therefore, in case of disobedience, the elimination of a [contrary] act") will reward the attention of those who appreciate the intricacies of the totalitarian doctrine.—WOLFGANG H. KRAUS.

Although primarily an historical reference work, *Early Japanese History* (*c. 40 B.C.–A.D. 1167*) (Princeton University Press, 2 vols., pp. xiii, 405, 249), by Robert Karl Reischauer, contains much of value to the political scientist. The seventy-six-page "Outline of Early Japanese History" in Volume I is both the clearest and the most up-to-date account available in English of the evolution of the Japanese emperor from tribal leader to monarch of a centralized administration modelled on Chinese lines, the preservation of the dynasty by relinquishment to court officials of all real power, and the slow growth of feudalism in the provinces behind the façade of court rule. The tables and charts following show clearly for the first time the reformed administrative organization of Taika to which Japan reverted temporarily after the Restoration of 1868, and from which her modern government evolved. The remainder of the volume is a detailed chronology of Japanese history competently compiled from Japanese reference books and checked with the original sources. Dates for the semi-mythological period have been corrected in accordance with the conclusions reached by Japanese historians, who put the accession of Jimmu Tennō at approximately 40 B.C. instead of 660 B.C. The ter-

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minal date, 1167, marks the appointment as Dajōdaijin of Taira Kiyomori—the beginning of the military rule which continued almost unbroken to 1867. Volume II, prepared with the collaboration of Mrs. Reischauer, includes a bibliography, valuable notes on editorial problems, historical maps, genealogical charts, a Chinese character index, and a detailed romanized index and glossary. This work is the second to be published under the imprint of the School of Public and International Affairs at Princeton, where Dr. Reischauer was a lecturer. A convenient guide for all students of the political development of Japan and an indispensable aid to those unable to read Japanese, it is a worthy monument to the author, who was killed by an aërial bomb in Shanghai last August while in the Far East collecting materials for further research.—CHARLES B. FAHS.

Many people in Canada have been perturbed within the last two or three years by the development of an active separatist movement in French Canada. Although it does not pretend to provide the immediate background for an understanding of contemporary currents of opinion in Quebec, Miss Elizabeth A. Armstrong's *The Crisis of Quebec, 1914–1918* (Columbia University Press, pp. 270) is, nevertheless, of considerable interest, since it is an able and sympathetic study of that spirit of *Canadienisme* which is once more making itself felt as an important force in Canadian politics. As an account of the reaction of the French-Canadian people to the war policy of the Canadian government in the years 1914 to 1918, the book helps to fill a serious gap in Canadian historical literature. The first three chapters deal with the evolution of French Canadian nationality, which, unlike most modern nationalisms, seeks not to impose itself on other peoples but merely to be left alone to work out its own salvation. Its motto is "Soyons nous-mêmes" and its watch-words, "Notre foi, notre langue, et nos institutions." The remainder of the book is a record, based mainly on what must have been an extremely laborious study of newspaper files and parliamentary debates, of the rift that gradually developed between the French-Canadians of Quebec and the rest of the Canadian people after a short period of national unity at the beginning of the war. The initial unity was destroyed by misunderstanding, tactlessness, and sheer stupidity on the part of English-speaking and French-speaking Canadians alike. There were anti-conscription riots in 1917 and early 1918, but in the latter months of the war conciliatory policies, which immediately produced more harmonious relations between the two races, were adopted. Dr. Armstrong is to be congratulated on this useful contribution to the knowledge of a conflict about which there has been much misunderstanding.—E. B. ROGERS.

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INTERNATIONAL LAW AND RELATIONS

The thesis underlying C. Hartley Grattan's *Preface to Chaos; War in the Making* (Dodge Publishing Co., pp. xvi, 341) is an old one. That the people in this country are at one and the same time believers in peace and supporters of economic policies which tend to lead us into war is generally recognized by competent students of American foreign policy. Mr. Grattan takes the extreme position that the forces working for peace will definitely lose out and that war is inevitable. His argument is presented in discussions of a series of topics including American public opinion, American involvement in the World War, the influence of the concepts of private property and sovereignty upon foreign policy, the nature of American economic and foreign policy; and it concludes with two chapters on the character of the next war and its aftermath. Mr. Grattan has no doubt presented an extensive argument in support of his belief that war is inevitable. With much that is said concerning the likelihood of war, due to current economic policies, the reviewer agrees. He dissents most emphatically, however, from the author's conclusion that war is inevitable. Probably this is due to a difference of opinion concerning the nature of the capitalistic system. More, however, it is due to the reviewer's inability to accept the simplification of issues which Mr. Grattan presents when he says, e.g., " . . . we still forget that there is a wide divergence of sentiment between the masses of the people who want peace and the masters of our society who protest that they want peace but who do not want to give up policies and institutions that are making for war." Our "masses" and "masters" are themselves much more divided than this statement suggests. Herein lies possibly additional fear of chaos, but also considerable hope that forces exist to counteract those which at any particular moment tend toward war. Similarly, the reviewer believes that in his discussion of forces working toward peace Mr. Grattan's use of the word "pacifists" is inappropriate. The term hardly has a clear-cut use in this country any more, because the professional peace forces are widely split on essential policies. The term, at best, covers but a very small proportion of the persons who in one way or another are vitally concerned with the issue of peaceful international relations. Anyone familiar with developments during the last five years will realize that the complexion of the peace movement has materially changed. Finally, the reviewer believes that there is underlying Mr. Grattan's analysis too much of an assumption of rigidity in both policy and form of the American social economic system. This is perhaps also a result of the simplification which Mr. Grattan has undertaken. It should be said that the author admits that he has perhaps over-simplified some of the points in his discussion. The reviewer believes that this has resulted in removing many of the factors from their proper setting, and therefore

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has distorted the total picture. With all that has been said, however, the picture presented by the author of the forces which rather unconsciously are leading in the direction of war is a stimulating and valuable one. It would indeed be fortunate if some of those who are today thus pressing toward their own destruction would read this word of warning.—WALTER H. C. LAVES.

In his *Great Britain and China, 1833–1860* (Oxford: Clarendon Press, pp. 345), W. C. Costin presents essentially the official English account of the establishment of treaty relations with China, since the complete British diplomatic record is almost exclusively drawn upon and accepted as presenting a complete and accurate narrative and interpretation of the events of the period. These British sources are occasionally supplemented by manuscript materials drawn from the archives of the Quai d'Orsay, the manuscript correspondence of the Catholic missionaries of Les Missions Etrangères in their Paris House, and by a few citations from American sources. Thus the official position is presented fairly and sympathetically. There is also revealed an appreciation of some of the difficulties of the Chinese officials, but mainly only as those difficulties were perceived by the British officials. The outlines of the subject are thus rather narrowly drawn, but within the limits set the study is careful and may be considered substantially accurate. It is unfortunate, however, that the author did not examine more extensively and carefully, and with less national bias, the American position as it affected Britain and Anglo-Chinese relations. Otherwise, what is essentially a sound and valuable study is weakened chiefly by the failure to engage in a full discussion of such important questions as extraterritoriality, the conditions of establishment and development of the International Settlement at Shanghai, and the British attitude toward the Taip'ing rebels. The discussion of such questions as these is so limited as to be totally inadequate.—HAROLD M. VINACKE.

Dr. William O. Aydelotte's *Bismarck and British Colonial Policy; The Problem of South West Africa, 1883–1885* (University of Pennsylvania Press, pp. viii, 179) is based largely upon manuscript material found in British and German archives. The main facts and the conclusions of the study have been summarized by the author in an article "The First German Colony" in the *Cambridge Historical Journal*, V, 291–313; and the topic has been discussed previously by several writers, notably Miss Mary Townsend, Mr. R. W. Bixler, and Mr. R. I. Lovell. Dr. Aydelotte supplies many details to the picture of the Anglo-German diplomatic dispute over some eight hundred miles of harborless African coast with

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an arid hinterland; he prints illuminating excerpts from unprinted confidential documents; but he does not change the general impression of the character of the controversy. To the question whether Bismarck actually desired to build up a German colonial empire, the author inclines to answer "not proven." He exonerates Britain from the charge of bad faith, and is kind to Gladstone; but Lord Derby is criticized rather sharply and the German ambassador to London, Count Münster, is accused of bungling matters. Dr. Aydelotte finds it hard to challenge the legend of Bismarck's infallibility. Bismarck refused to reveal his plans and to give explicit instructions to Münster; nevertheless, the latter is blamed for the confusion that followed; and although the author admits that Bismarck probably did not appreciate the implications of the word "protection" as used in a note to Münster of April 24, 1884, he seems to think that British statesmen should have divined what Bismarck intended to do. Of the four appendixes, the most useful are II and III, dealing respectively with omissions in printed state papers and the character of Herbert Bismarck.—PAUL KNAPLUND.

In sponsoring the preparation and publication of William J. Wilgus' *The Railway Interrelations of the United States and Canada* (Yale University Press, pp. xvii, 304), the Carnegie Endowment for International Peace, Division of Economics and History, has reached a "new high." It was said of Gladstone in his budget efforts that he had the knack of "setting figures to music." Colonel Wilgus, out of his half-century of varied railroad engineering experience, has gleaned the art of conferring upon railroad history the quality of a saga. This is the saga of two great peoples, who, across a 4,000-mile boundary and through fifty "border eyelets," have interlaced their economic destiny with bands of steel. As Professor Shotwell has appropriately said, this is a story with "no parallel anywhere in history." The account runs from buffalo tracks and canoe routes to the Great Lakes-St. Lawrence Waterway and an International Commerce Commission, which are not yet. Great masses of details, many of them gathered through extensive correspondence with railroad officials and public authorities (which correspondence has been deposited in the Columbia University Library for use by all students of the subject), are masterfully set forth in eleven chapters (one each devoted to physiography, historical outline, and résumé, the remainder to topics such as Northeastern Gateways, Rate Structure, etc.), ten appendices, forty-seven tables, and twelve maps. Historians, economists, government and railroad officials, financiers, and engineers will welcome the volume for its authoritativeness, its comprehensiveness, its statesmanlike recommendations, and its guides to further study and materials.—HENRY REIFF.

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Dr. William Habberton's *Anglo-Russian Relations Concerning Afghanistan, 1837–1907* (Urbana: University of Illinois Press, pp. 102), is an excellent brief survey of the history of the Afghan question in Anglo-Russian diplomacy for the period indicated by the title. The author follows a single thread and barely touches the complications connected with the general aspects of Anglo-Russian, Anglo-Afghan, and Russo-Afghan relations. The discussion deals with Britain's half-hearted efforts to check the advance of Russia in Central Asia, the crises of the eighties, the delimitation of the Russo-Afghan boundary, and the convention of 1907. The study is based on extensive research in printed material, and it will prove useful for students who desire a connected account of lengthy negotiations. But those who are looking for the "whys" and "wherefores" are apt to be disappointed. For instance, no mention is made of the fact that influential Englishmen favored Russian occupation of khanates in Central Asia because slavery and the slave trade would then be exterminated in that region. Appendices give the Anglo-Russian agreements of 1873, 1885, 1895, and 1907. The bibliography is full and up-to-date, and the index is good.—PAUL KNAPLUND.

For more than seventeen years, the Royal Institute of International Affairs, more familiarly known as Chatham House, has provided students of international relations with a collection of surveys, monographs, study group reports, and individual studies which are as remarkable for their range and variety as for the scientific objectivity which they so sedulously preserve. This service, supplemented as it is by unique library and research facilities, has recently been described by Commander Stephen King-Hall in a slender volume, *Chatham House; A Brief Account of the Origins, Purposes, and Methods of the Royal Institute of International Affairs* (Oxford, pp. xii, 144). Although written chiefly for the purpose of interesting possible contributors in the endowment campaign which is now being conducted by the Council of Chatham House, the book provides an excellent account of the structure, methods, and impressive achievements of an institution which has served most deservedly as the model for most similar national institutions throughout the world.—GRAYSON L. KIRK.

Any impartial observer of international affairs must question the reasons which have induced a German authority to translate and edit the Czechoslovak memoranda submitted to the Peace Conference of Paris of 1919. The answer can be found in the introduction to Dr. Hermann Raschhofer's *Die tschechoslowakischen Denkschriften für die Friedenskonferenz von Paris 1919–1920* (Carl Heymanns, pp. xxxii, 331), wherein, for example, we are reminded that it was "the intention of the

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Czechoslovak government to create the organization of the state by accepting as a basis of national rights the principles applied in the constitution of the Swiss Republic; that is, to make of the Czechoslovak Republic a sort of Switzerland, taking into consideration, of course, the special conditions in Bohemia" (pp. xi–xii). The point is, of course, that these promises have not materialized, and thus, one can easily assume, another good argument has been stored up in case Berlin decides to do something about the German minority in Czechoslovakia. The book is just another propagandist work which, at its best, is a good illustration of the methods used by Goebbels and his associates.—J. S. ROUCEK.

POLITICAL THEORY AND MISCELLANEOUS

In his *Karl Marx und die Wirklichkeit* (Editions de la Phalange, pp. iii, 97), Heinz Lunau undertakes to show by logical and philological analyses that Marxian economics is fallacious. "He began with phantasy and ends with products of phantasy" (p. 36). Marxism is scholasticism, jugglery with empty words labelled scientific. Recognition of this must precede any attempt to better present economy. Here, Lunau believes, is where other critics of Marx—such as Werner Sombart—err; because they begin criticism with acceptance of Marx's premises, a process that can lead only to heterodox, but equally delusive, socialisms. The value of this rather bumptious monograph can be tested by means of the opportune appearance in English translation (somewhat abbreviated) of Sombart's *Deutscher Sozialismus*. This highly condensed little volume (*A New Social Philosophy*, Princeton University Press, pp. xii, 295) is written as a tract for the times, and one that, in the author's words, "keeps within the province of ideas set by the government." That adds to its value for us. In deftly articulated series—well summarized in the six section headings: I. The Economic Age; II. What is Socialism?; III. The Aberrations of Socialism in the Economic Age (Marxism); IV. What is German Socialism?; V. The State; VI. Economics—Sombart fulfills his purpose, stated in his foreword to be "to take the obviously strong forces which are striving to achieve the fulfillment of the national socialistic idea on its socialistic side and turn them into paths in which they shall not become destructive but shall enrich themselves and all life." Sombart is throughout aware that "German Socialism is not exhausted through the awakening of sympathetic feelings or enthusiastic moods. An open spirit must precede, but it must at once become effective in an objective arrangement which also takes account of daily life with its disenchantments" (p. 150). This sanity puts scholars in debt to the author and to his translator, Professor Karl Geiser, for a very compact, lucid, and intelligent exposition of one aspect of Naziism. Professor Geiser explains the change of title as due to his belief in "the universal character of the book;" with this

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the reviewer must disagree. Rather, he sides with Sombart in believing that today a sound economy must be based upon national—and, therefore, peculiar—factors. Yet Sombart's very emphasis upon that necessity does make his book a timely exemplar for social analysts of every land.—ALLAN F. SAUNDERS.

E. Yaroslavsky, in his *History of Anarchism in Russia* (International Publishers, pp. 127), has not given us a rounded historical account, but rather "experiences of the anarchist movement from Bakunin through the Russian revolution in relation to anarchism in Spain today." There is no adequate statement of the origins of anarchism or of its doctrines, nor any genuine evaluation of its significance in Russia. Instead, the general argument is maintained that the methods advocated by anarchists in Russia (individual terrorism and isolated acts of expropriation) degenerated into banditry, harming the revolutionary cause inestimably. In 1917, objecting to all authority, they opposed the establishment of the proletarian state under Communist leadership. They failed to see that the workers' state was different from the old capitalist state known to Proudhon and Bakunin; that the slogan "property is theft" is true of capitalist property, but not of socialized property; that a strong discipline must be temporarily established to prevent the return of forces of reaction. The failure of Makhno and his cohorts to establish a community based on anarchist principles in Ekaterinoslav is taken as a practical demonstration of the inadequacy of anarchism. The final chapter, contrasting communist and anarchist views in respect to the state, abolition of classes, participation in government bodies, religion, etc., is well done. The book throughout is a paean of praise for Stalinist Russia, and the anarchists of Spain are urged to support the communist fight against the machinations of Trotsky, Hitler, and Mussolini.—E. C. HELMREICH.

Since so much fantastic nonsense pervades the writings of racial theorists from Gobineau to Rosenberg, critical evaluation might seem almost superfluous. Such is not the case. Like their absolutist brethren, the economic determinists, the racial determinists present a thesis which, because of its continued vigor, cannot be summarily dismissed. Jacques Barzun offers in his *Race; A Study in Modern Superstition* (Harcourt, Brace and Co., pp. x, 353) a scholarly, though far from dispassionate, study of racial doctrines as they have developed in European thought over the past century. He appends some random quotations as specimens of "race-thinking" and twelve pages of valuable bibliographical notes. The author's criticism of these theories proceeds from a fundamental agnosticism which challenges the logical validity of all generalizations, not only as to racial, but as to any group-identifying, characteristics. His

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position is certainly more consistent than that of some neo-Marxists, for instance, who reject "race" or "nation" but accept "class" as a concept denoting a substantive human grouping. However timely may be Mr. Barzun's warning against loose and facile generalization, he proves too much. Whether we like it or not, large-scale political phenomena cannot be dealt with in terms simply of individuals. Human categories and subcategories must be posited from observed similarities of behavior, and tested by their serviceability. Common identifications are never absolute in human groupings; they simply represent prevailing tendencies, with overlapping fringes and variabilities in time and intensity. The concept of "race," it is freely admitted, suffers from ambiguity and vagueness; perhaps its cultural is more useful than its biological significance. The differentiation of cultures (whether conceived in terms of "race" or "nation") is not absolute in its external or in its internal implications; but this is true of all group distinctions. Characterization of group behavior are hazardous, but can scarcely be avoided.—WILLIAM P. MADDOX.

Conservatives of the world, unite! This is the cry of Gerald M. Spring in his *Nationalism on the Defensive* (Arthur H. Clark Company, pp. 55). In the writings of the Traditionalists—Hilaire Belloc, G. K. Chesterton, Irving Babbitt, Allen Tate, and Donald Davidson among others—he sees attempts at a rational internationalism. It is essential, however, that the Protestants and Catholics, the Agrarians and Urbanites, discover and admit the common denominator of the movement—defense of the inalienable right of property—thus presenting an unbroken phalanx to proletarian solidarity. He gives a sympathetic and lucid interpretation of an intelligentsia confused and panicky by a too rapidly moving world. A reverence for the traditional is the only balancing wheel. On the shoulders of the Traditionalists of all shades is perched insecurely the mantle of Edmund Burke and the eighteenth-century conservatives. In the words of Dr. Spring: "We are living in the age of proletarian or workers' class consciousness. What is now needed is an equal understanding among conservatives of different shades of opinion all over the globe . . . No mere national concept must be allowed to interfere with this solidarity of conservatives so important at this time."—RAY F. HARVEY.

Miss Joan Robinson, author of *Essays in the Theory of Employment* (Macmillan Co., pp. vii, 255), is the most outstanding disciple of Professor J. Maynard Keynes, whose questioning of the very basis of the classical theory has made him in the past six years the center of all discussion in Anglo-American economics. The classical school assumes that the rate of interest will adjust itself to equilibrate the supply of savings

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and the demands of investment, and that consequently funds saved from consumption must inevitably find their way into the hands of entrepreneurs. The Keynes school strikes at the very heart of this theory by making investment independent of savings, first because in actuality the psychology of savers in certain periods is such that they prefer to hoard rather than invest—regardless of the rate of interest—and secondly, because the banking system in actuality expands its loans regardless of savings, and hence determines the rate of interest independent of savings. The classical school attributes to the rate of interest the ability to effectuate exactly the balance between savings and investment which will guarantee full employment. In fact, however, the classical promise of full employment as a result of the automatic adjustment becomes a mere chance fulfillment, and hence the Keynes school demands social action at the point of investment, namely, by seizing the rate of interest as a fulcrum and reducing it or else by public responsibility for investment. Miss Joan Robinson's essays include "full employment," inability of labor, the "long-time theory of employment," the "concept of zero savings," and even "some reflections on Marxist economics," in which Marx is properly classed as a "classical economist."—SELIG PERLMAN.

Andrew R. Burn's *The World of Hesiod; A Study of the Greek Middle Ages* (E. P. Dutton and Co., pp. xv, 263) is an attempt "to answer the question what manner of men the Greeks were, before they launched out on that momentous process of change which leads to Ionian rationalism and to the civilization of Athens." The author covers chronologically the period from about 1000 B.C. to well into the eighth century and calls this period the Dark Age. In Chapter II, he uses various sorts of material, both literary and archaeological, to make his readers familiar with "a remarkable old book," the *Works and Days* of Hesiod, stressing particularly its economic significance. Other chapters treat of psychology and the practice of magic, law, the state, the family (with a long discussion on sexual restrictions and homosexuality), and Greek festivals and games. A lengthy chapter—perhaps too lengthy—is devoted to the Greek states in the Dark Age, and a brief chapter—perhaps too brief—to travels and sea-farers. The book deals with a very interesting subject, but the style and presentation are sometimes hazy and too abstract. In addition, the author is so greatly influenced by Marx and Freud, whose work he considers "part of the common heritage of our own and all succeeding generations" (p. xi; also p. 12), and so greatly admires Hegel's philosophy (pp. 10, 142), that the book must be read with some caution. He omits in his bibliography the years of publication of the works mentioned.—A. VASILIEV.

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Research Memorandum on Minority Peoples in the Depression (Social Science Research Council, pp. x, 252), by Donald Young, is one of thirteen monographs sponsored by the Committee on Studies in Social Aspects of the Depression of the Social Science Research Council. In accordance with the general plan of these studies, Professor Young has applied himself to discussion and formulation of feasible research problems which might be undertaken in an effort to determine various effects of the depression upon those groups in the United States which, because of their racial or national origins, may properly be regarded as minorities. Data, sources, and interpretations which could be of use in such studies are considered and analyzed, and some general information concerning minorities is included incidentally. The author feels, however, that "practically nothing of scientific value is known about American minorities in depression." In the chapter on "Government and Politics," a number of projects are suggested which, if carried out, might well aid us in discovering whether the depression exerted any particular influence on minority groups in relation to such matters as voting, relief, and radicalism. Several short appendixes dealing with United States census and immigration classifications are included.—MARTHA ZIEGLER.

In *Reconstruction* (International Publishers Co., Inc., pp. 256), James S. Allen has expanded into book size the central theme of Chapter I of his study of the year before on "The Negro Question in the United States." The book forms the second link in an attempt to re-write the history of the American people in the interests of labor. In eight chapters, the volume, with the subtitle, "The Battle for Democracy (1865–1876)," develops the thesis of revolution, reaction, radical reconstruction, political consolidation, labor organization, coalition, and counter-revolution. The central figure is the Negro. The central thought is land distribution. Without the break-up of the plantations as a general objective and the possession by each freedman of forty acres as a specific goal, the fate of Negro democracy was fore-doomed. Civil Rights could not last. Suffrage power could not be maintained. The book is instructive and stimulating, with a clear and forceful style. Most of the controversial statements are documented. A few minor errors were noted: Johnson was acquitted, *not impeached*, by one vote (p. 34); "The election campaign of 1875" (p. 199); 1915, not 1914, for the Guinn decision on the grandfather clause (p. 209).—GEORGE C. ROBINSON.

Only as a statement of the position of the Communist party on the American Revolution does *The First American Revolution* (International Publishers, pp. 160), by Jack Hardy, have interest for the student of

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American affairs. The book's purpose is "to preserve the revolutionary traditions of the American people," on the assumption that in "the present epoch of productive decline and increasing class oppression, the American people may well turn back to the first American Revolution, learn from it, and then carry on to completion the work begun by it." The body of the essay deals with the well-known facts of the Revolutionary period, but the author is not sufficiently versed in the subject to compress his material without sacrificing accuracy of statement. The significant ideas appear to have been taken (without due acknowledgment) from an article by Louis M. Hacker, "The First American Revolution," in the *Columbia University Quarterly* for September, 1935. Those interested in the best Marxian interpretation of the Revolution should read Mr. Hacker's able analysis.—CURTIS P. NETTELS.

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CLYDE F. SNIDER
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